SUPREME COURT OF THE UNITED STATES.

No. 134.

WILLIAM & D. HARDEMAN, AND WILLIAM P. PERKINS, PLAINTIFFS IN ERROR,

VS.

EDWARD ANDERSON.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

INDEX.

	Original.	Print.
Writ of fieri facias	1	2
Marshal's return	2	3
Motion to set aside marshal's return	3	3
Motion sustained	3	3
Bill of exceptions	3	4
Clerk's certificate	10	8
Writ of error	11	8
Citation	12	9
Service of citation	13	9
Bond	14	9
Affidavit of William Hardeman	15	10

J. & G. S. Gideon, Printers.

EDWARD ANDERSON
vs.
W. AND D. HARDEMAN.

Pleas before the honorable Peter V. Daniel, presiding judge of the circuit court of the United States held at the town of Jackson, in and for the ninth circuit and southern district of Mississippi, at the May term, in the year of our Lord one thousand eight hundred and forty-four.

Be it remembered, that heretofore, to wit, on the 14th day of December, 1839, the following execution of fieri facias issued out of the clerk's office of the court aforesaid, in the words and figures following, to wit:

United States of America,
Southern district of Mississippi, ss:

The President of the United States to the marshal of the southern district of Mississippi, greeting:

Whereas, at the May term, 1839, of the circuit court of the United States for said district, Edward Anderson recovered judgment against William Hardeman and D. Hardeman, for the sum of eight thousand two hundred and ninety-three 45-100 dollars, with interest thereon at the rate of 8 per centum per annum, from the 22d day of May, A. D. 1839, until paid, together with costs and charges by said plaintiff in and about his said suit in that behalf expended, whereof the said defendants were convicted, as appears to us of record: And whereas, on the fifteenth day of June an execution of fieri facias issued from our said court, directed to the marshal of said district, for the amount of said judgment, interest, and costs, as aforesaid; which execution was levied on certain property of said defendants; which said property was suffered to remain in possession of said defendants, upon executing a forthcoming bond according to law, with W. P. Perkins as security; which said bond was returned to our said court at the November term thereof, A. D. 1839, by the marshal aforesaid, "forfeited," and thereby has the force and effect of a judgment, according to the statute in such case made and provided, as well against the said sureties, as against the defendants to said original execution for said debt, interest, and costs.

Now, therefore, you are hereby commanded, that of the goods and chattels, lands and tenements, of the said William Hardeman, D. Hardeman, and W. P. Perkins, late of your district, you cause to be made the amount of the said judgment, interest, and costs, so recovered as aforesaid; also the sum of one hundred and thirty-three 81-100 dollars, including the costs accrued since the emanation of said execution; and that you have the said sum of money before our said circuit court, at a term to be held on the first Monday in May next, to render to said plaintiff; and have also then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of [L. S.] November, A. D. 1839, and in the 64th year of the independence of the United States.

Issued the 14th day of December, 1839.

WM. BURNS, *Clerk.*

(Endorsement.) "No security of any kind is to be taken.

WM. BURNS, *Clerk.*"

Marshal's return.

"Received on this execution, February 9th, 1840, the sum of nine thousand one hundred and twenty-five dollars, in Union money, or post notes of the Union bank.

WM. M. GWIN, *Marshal.*

By his deputy, JNO. F. COOK."

And afterwards, to wit, on the twenty-fourth day of November, A. D. 1841, the following motion was made and entered by the plaintiff in said cause; which motion is in the words and figures following, to wit:

"Edward Anderson
vs.
William Hardeman & D. Hardeman.

Fi. fa. to May term, 1840, for eight thousand two hundred and ninety-three dollars five cents, besides interest and costs

The plaintiff, by his attorney in this case, moves the court to strike from the execution above mentioned; the following receipt, to wit:

Received on this execution, February 9th, 1840, the sum of nine thousand one hundred and seventy-five dollars, in Union money, or post notes of the Union bank.

W. M. GWIN, *Marshal.*

By his deputy, JNO. F. COOK."

And to direct the clerk to issue an alias fi. fa., November 24th, 1841.

ROB. HUGHES, *for plff.*

And afterwards, to wit, at the said May term of the court aforesaid, to wit, on the 20th day of May, in the year of our Lord one thousand eight hundred and forty-four, until which time the said motion was regularly continued, the following order was made, and entered on the minutes of said court, to wit:

Edward Anderson
vs.
William Hardeman & D. Hardeman.

Motion to set aside marshal's return sustained, and alias fi. fa. awarded.

Bill of exceptions, signed, sealed, and ordered to be made a part of the record herein.

(Bill of exceptions tendered by defendants.)

Be it remembered, that on this 20th day of May, came to be heard before the honorable Peter V. Daniel, judge, presiding in said court, the motion made in the above cause to set aside the return of the marshal on the execution issued in said cause; which motion is in the words and figures following, to wit: (See motion before copied.)

The plaintiff then read to the court the fi. fa. issued in said cause, and the return on the same; which fi. fa. and return are in the words and figures following, to wit: (See fi. fa. and return before copied.)

The plaintiff then read the deposition of Richard W. Anderson; which deposition is in the words and figures following, to wit:

The State of Alabama, county of Madison, sct:

Be it remembered, that on this 16th day of March, A. D. 1842, I, George W. Lane, judge of the 5th judicial circuit of the State of Alabama, called and caused Richard W. Anderson to be and personally appear before me, at my office in Huntsville, in the county of Madison, and State aforesaid, to testify, and the truth to say, on behalf of the plaintiff, in a certain matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of Mississippi, at Jackson, wherein Edward Anderson is plaintiff, and William Hardeman and D. Hardeman, and others, are defendants, upon the law side of said court.

The said Richard W. Anderson, being about the age of fifty-one years, and being first by me cautioned and sworn to testify the truth, the whole truth, and nothing else but the truth, in the matter of controversy aforesaid, and he thereupon deposed and said as follows, viz:

Question 1st. Are you acquainted with the parties to this suit, and the subject matter of controversy between them?

Answer. I am.

Question 2d. Be pleased to state all you may know material to the issue in reference to said controversy.

I arrived in Jackson, Mississippi, about the 29th day of January, 1840. A day or two after my arrival I went with Robert Hughes, esq., to the marshal's office, to ascertain the situation of Edward Anderson's business. No money appeared to have been collected. After remain in Jackson several days I went to Yazoo and Rankin counties, and, on my return, finding that the legislature had not made provision for the redemption of the post notes of the Union Bank of Mississippi, then running to maturity, I inquired what kind of money the marshal was in the habit of receiving in satisfaction of executions, and left written instructions with Robert Hughes, esq., on the 21st of February, 1840, to take nothing in payment of the execution in favor of Edward Anderson, but par funds, or Mississippi bank paper at such rates as will make them equal to par, unless otherwise instructed. I inquired at the marshal's office, at different periods up to the time of leaving Jackson, if any money had been paid on account of Edward Anderson, and did not hear of any having been paid.

I left Jackson on or about the 23d February, 1840. On or about the 24th, I saw Mr. William Hardeman in Canton, the county seat of Madison county, where we had some conversation with regard to a tract of land he wanted to let Edward Anderson have, in satisfaction of a debt on which no judgment had been obtained, (which I took in payment of that debt in February, 1841.) During the conversation Mr. William Hardeman applied to me to know if Union money would be received in payment of the execution then in the hands of the marshal. I informed him that it could not be received; that the legislature had adjourned without making any provision for the redemption of the Union post notes then running to maturity, and gave it as my opinion that Union money would further depreciate. Some time afterwards I saw Mr. Thomas Hardeman in Yalobusha county, who had just returned from Madison county. I inquired of him if he heard of any money having been paid on the execution vs. William Hardeman; he thought some had been paid, and I wrote to Robert Hughes, esq., and gave instructions accordingly, but did not hear from him; and had no certain information in regard to it until the return of General Pryor McGrant to Columbus, in June, 1840, by whom the attorney's receipts had been forwarded to Jackson; who informed Edward Anderson, or myself, that it had been paid in Union post notes, and I think post notes were then worth but 30 or 35 cents in the—(See marshal's return on execution, No. 302.)

I returned to Madison county, Mississippi, during the month of July, 1840. I called to see Mr. William Hardeman; I expressed my astonishment that Union post notes should have been paid, when I expressly told him they could not be received; then, for the first time, I was told it was an arrangement Mr. Henry R. W. Hill had made with the marshal, or one of his deputies. I went to Vicksburg to see William M. Gwin, the marshal; related the circumstance to him. He wrote a letter to Mr. William Hardeman, but I could not effect a satisfactory arrangement with either of them.

I returned again to Madison county, Mississippi, in December, 1840. I called to see Mr. William Hardeman; could not get any money; was then informed Mr. H. R. W. Hill would be at Vicksburg in a few days. I went to Vicksburg, to meet with Mr. Hill and Doctor Gwin together, to see if an arrangement could be effected, by which I could get the money. I waited some two or three days for the arrival of Mr. H. R. W. Hill. Before I had an interview with him, Doctor Gwin had a death in his family; and, on the 22d or 23d December, 1840, I had a conversation with Mr. Hill, in Vicksburg, with regard to the Hardeman debt. He informed that he had nothing to do with it, except that he had authorized the marshal, or one of his deputies, to apply in that way the proceeds of a claim he had vs. Doctor John Hanna, for about three thousand dollars. On returning to Jackson, I had the curiosity to see how the marshal's return on the execution vs. Doctor Hanna would agree with the return on the execution of E. Anderson vs. William Hardeman; and on inquiry at the office, the execution appeared to be from the house of N. & J. Dick & Co. vs Hanna & Spell, amount of judgment $2,870 86, with interest from 18th May, 1839, at the rate of 8 per centum per annum; returned satisfied about 1st March, 1840. See execution No. 773, when the return on E. Anderson's execution vs. W. & D. Hardeman, and others, is dated about 9th February, 1840; see execution No. 302. And further this deponent saith not.

RICHARD W. ANDERSON.

And I, the said George W. Lane, as aforesaid, do certify, that the deposition of the said Richard W. Anderson was taken, as aforesaid, because he, the witness, lives at a greater distance than one hundred miles from Jackson, the place of trial of the suit or matter of controversy aforesaid; and I caused no notification of the time and place of the taking of said deposition to be made out and served upon Wm. Hardeman and D. Hardeman, and others, the adverse parties, or their counsel, to be present at the taking of the said deposition, and to put interrogatories, if they saw proper; because neither the said William Hardeman and D. Hardeman, and others, nor their counsel, live within one hundred miles of the place of caption to this deposition, being the place where the same is taken.

And I do further certify, that the deposition was taken down by me, from the statement of the witness made in my presence by him, and signed by him in my presence. And I do further certify, that I am not of counsel or attorney to either of the parties aforesaid, or interested in the event of the cause or controversy aforesaid.

In testimony whereof, I hereunto set my hand and seal, the day and year first before mentioned.

GEO. W. LANE. [SEAL.]

This was all the evidence of the plaintiff. The defendants then read, by consent, to the court, the written statement of H. R. W. Hill as evidence; which is in the words and figures following, to wit:

In the month of November, 1839, I informed John F. Cook, the deputy marshal for Madison county, that an execution would issue against William Hardeman in the above case, and that, when it came into his hands, he might apply any funds in his hands belonging to N. & J. Dick & Co., coming to the marshal's hands; there being a much large amount of these executions in the hands of the marshal, or would be from the November term, 1839; some time in January, or early in February, Mr. Cook shewed me the execution against Hardeman, upon which a payment had been made for $1,500, by Mr. Perkins, I believe. Mr. Cook said he was satisfied that he had funds sufficient of N. & J. Dick & Co. in hands, or would have, and that he would enter full satisfaction on the execution, 9th February, 1840; and that he had the money deposited in the bank at Canton, sufficient to pay the plaintiff at any time he would call for his money. Being about to leave for New

Orleans before court, and wishing to close my matters with the marshal, I had a settlement with Mr. Cook, by transferring him, for the balance which was not paid in money or Union bank notes, I gave him an execution that was then levied on the property of Doctor Hanna, as I understood, for about $3,200; which money, I believe, Doctor Hanna had not paid at the time, as he called upon me to pay the execution, and I told him I had transferred and had no control over it, and refused any arrangement with him. In addition I gave him Doctor William M. Gwin's draft on the marshal's office for about $400. The balance of the execution was paid in Union bank notes, which I borrowed $3,000 for him, Hardeman, and paid 8 per cent. interest in New Orleans at 12 months. At the time of this settlement, Union bank notes was nearly the entire circulating medium of the State; was received in all settlements, as far as I had cognizance of. I had large dealings in the country, was always willing to receive it, and the planters were begging for it, as an advance upon cotton then shipping to New Orleans; and had the marshal in the above case refused to take in satisfaction any thing but New Orleans funds, in the above case it would have been produced. Mr. Richard Anderson, agent for the plaintiff, told me, if he could have got the money when it was paid to the marshal, he would have received it.

H. R. W. HILL.

MAY 21st, 1842.

Sworn to and subscribed, before me, this 21st day of May, 1842.

GEO. W. MILLER,
U. S. commissioner, southern district, Miss.

The said Hill being in court, was also further examined as a witness for the defendant, and testified, in addition to his written statement, that the post notes of the Mississippi Union bank were only at a discount below specie, when paid on this execution, of 7 to 10 cents on the dollar; that they continued gradually to decline, and when this motion was made had become worth only 20 or 25 cents in the dollar, or were at a discount of 75 to 80 cents per dollar, and that now they were worth only 8 to 10 cents in the dollar.

The defendant then introduced Robert Hughes as a witness, who testified that, as an attorney of this court he had, during the years 1838 and 1839, recovered large judgments in this court against many individuals, and that he always took from the marshal the post notes of the Union bank in payment of executions on those judgments, and that he never directed the marshal to collect specie in this case until after the instructions of Anderson, given on the 21st February, 1840. He also stated that, some time in the winter of 1840, Mr. Holt, an attorney of this court, had written to the marshal not to receive the post notes of said bank, on any executions in the hands of the marshal where he was an attorney; that after the letter thus written by Holt, he (Hughes) had some conversation with the marshal, of which he has not a distinct impression on his mind; but the best recollection he has of that conversation is, that he told the marshal to continue to receive the said post notes in payment of all executions where he was an attorney, unless he gave him instructions to the contrary.

This was all the testimony in the cause; and the court having heard the same, ordered that said motion be sustained; that said return of the marshal on said fi. fa. be set aside, and that an alias fi. fa. issue against the said defendants. To which judgment and order of the court on said motion the defendants, by their counsel, except, and tender this their bill of exceptions, which is signed and sealed, and made part of the record in the cause, this 20th May, 1844.

P. V. DANIEL. [SEAL.]

United States of America,
Southern district of Mississippi, circuit court, U. S.

I, William H. Brown, clerk of said circuit court, do hereby certify, that the foregoing nine pages contain a true and complete transcript of the record of the judgment in the case therein named, as the same now remains of record in my office.

[L. S.] In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at Jackson, this 28th day of February, A. D. 1845.

W. H. BROWN, *Clerk.*

United States of America, ss:

The President of the United States to the judges of the circuit court of the United States for the southern district of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of a judgment on a motion awarding an execution, which is in the said circuit court, before you, or some of you, between Edward Anderson, plaintiff, and William Hardeman, D. Hardeman, and William P. Perkins, defendants, a manifest error hath happened, to the great damage of the said defendants, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in his behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States should be done.

[L. S.] Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the first Monday of May, in the year of our Lord one thousand eight hundred and forty-five, and of the independence of the United States the 69th.

W. H. BROWN,
Clerk circuit court U. S. so. dist. Miss.

The President of the United States to Edward Anderson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the ninth circuit and southern district of Mississippi, wherein William Hardeman and D. Hardeman, are plaintiffs, and you are defendant in error, to shew cause why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel J. Gholson, one of the judges of the circuit court of the United States for the southern district of Mississippi, this tenth day of May, in the year of our Lord one thousand eight hundred and forty-five, and in the 69th year of the independence of the United States.

S. J. GHOLSON.

Executed on Robert Hughes, May 12th, 1845, and on C. R. Clifton, May 12th, 1845.

THOMAS FLETCHER, *Marshal.*
By P. FLETCHER, *Deputy.*

Marshal's fees—service and copy, $4 50.

United States of America,
Southern district of Mississippi, sct:

Know all men by these presents, that we, William Hardeman, D. Hardeman, and William P. Perkins, Mary M Hilliard, and H. R. W. Hill, are held and firmly bound unto Edward Anderson in the just and full sum of eighteen thousand dollars, lawful money of the United States, to be paid to the said Edward Anderson, his lawful attorney, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 10th day of May, A. D. one thousand eight hundred and forty-five.

The condition of this obligation is such, that whereas, at a term of the circuit court of the United States for the southern district of Mississippi, commenced and held at the city of Jackson on the first Monday of May, A. D. 1844, an execution was awarded on a motion said court in favor of the said Edward Anderson, against the said William Hardeman, D. Hardeman, principals, and W. P. Perkins, on a forfeited forthcoming bond. Original judgment rendered 22d May, 1839, bond forfeited November, 1839, for the sum of eight thousand two hundred and ninety-three 5-100, with interest and costs of suit; and the said William Hardeman and D. Hardeman, and William P. Perkins, have sued out a writ of error from the Supreme Court of the United States, to reverse said judgment.

Now, if the said William Hardeman, D. Hardeman, and William P.

Perkins, shall prosecute this said writ of error to effect, and shall well and truly pay and satisfy the amount of said judgment, and all such damages, interest, and costs, as the said Supreme Court of the United States shall adjudge in the premises, if they, the said William Hardeman, D. Hardeman, and William P. Perkins, shall fail to make their plea good, then, and in that case, this obligation to be void, otherwise to remain in full force and virtue.

Signed,	WILL. HARDEMAN,	[SEAL.]
	D. HARDEMAN,	[SEAL.]
	W. P. PERKINS,	[SEAL.]
	MARY M. HILLIARD,	[SEAL.]
	H. R. W. HILL.	[SEAL.]

Sealed and delivered, in presence of—
JAS. B. SPANN,
JOHN GREEN.

United States of America,
Southern district of Mississippi:

This day William Hardeman personally appeared before me, commissioner, &c., for taking affidavits in civil cases, &c., and made oath, that some time during the last summer, and many months previous to the session of the present term of the Supreme Court of the United States, he applied to the clerk of the circuit court of the United States, for the southern district of Mississippi, to know what he should do in relation to the record in the case of Edward Anderson against the said Hardeman and others, on a writ of error from said circuit court; and the said clerk then told this affiant that he would prepare, and send up to the Supreme Court of the United States, the transcript of the record in said cause, and that all affiant would have to do, would be to procure sureties for costs of suit in the Supreme Court. Trusting to this, and fully believing that said transcript would be duly sent up by the clerk to the Supreme Court, this affiant applied to David W. Dickenson, a member of Congress, and amply solvent, to become his surety for the costs of the Supreme Court; which he promised to do.

The said Dickenson was taken sick, and, as he informed affiant, had written to Joseph H. Peyton and Mr. Rayner, members of Congress, to become the sureties for the costs. Affiant has been informed this day, for the first time, by his counsel in the circuit court, that the transcript of said record had not been forwarded by the clerk, as aforesaid. Affiant sends the same accompanying this affidavit, and prays that said record be filed, and the case docketed; and if said writ be dismissed, that the same be set aside, the record filed, and the case docketed.

WILL. HARDEMAN.

Sworn to and subscribed, before me, on the 26th day of February, A. D. 1845.

THOS. SHACKLEFORD,
U. States commissioner of affidavits, &c., for the southern district of Mississippi.

Filed 2d December, 1845.

1026.

SUPREME COURT OF THE UNITED STATES.

No. 145.

JAMES PEPPER, SARAH H. EVANS, GEORGE McCULLOUGH, AND LOUISA McCULLOUGH, PLAINTIFFS IN ERROR,

vs.

HUGH W. DUNLAP, CURATOR, &c., AND HIS WIFE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

INDEX.

	Original.	Print.
Petition for executory process	1	1
Note, $4,900, and protest	2	3
Note for $6,160, and protest of same	4	6
Notes, (copy of) for $6,160	5	8
Note for $6,160, and protest	5	9
Note for $6,160	6	10
Act of sale (authentic)	6	10
Notice of seizure	9	14
Petition of appeal	9	15
Bond	9	15
Citation of appeal	10	16
Motion for certiorari	10	17
Minutes and opinion of S. Court	11	17
Petition and order of injunction	13	21
Bond and citation	17	26
Writ of injunction	18	28
Interrogatories	18	29
Subpœna and commission	20 & 21	31
Answers to interrogatories	21	32
Commission and interrogatories	23	35
Minutes, entry on	24	37
Motion to dissolve injunction	24	37
Minutes, entry on	25	38
Notice of judgment	25	38
Affidavit of attendance	25	39
Petition of appeal	26	40

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	Original.	Print.
Minutes, entry on	26	41
Same	26	41
Judge's order	28	43
Petition and order of injunction	29	44
J. M. Loony's petition	34	51
Bond Y	36	53
Writ of injunction	36	54
Citation	37	55
Petition for a commission	37	55
Interrogatories	37	56
Exceptions	38	57
Minutes, entry on	39	58
Amended petition	39	58
Moore's letter to McHenry & Holmes	39	59
Thomas H. Blake to same	40	60
Commission and interrogatories	40	61
Interrogatories and answers	41	62
Letter from General Land Office	43	64
Minutes entry (2)	44	66
Judge Curry's decision	44	67
Minutes, entry on	46	69
Petition of intervention	46	70
Petition and interrogatories	47	71
Order to withdraw receiver's certificate	49	73
Copy of certificate	49	74
Answer of Sarah H. Evans et al.	50	75
Minutes, 5 entries on	52	77
Statement of facts, plaintiffs' evidence	52	78
Do. defendants' do.	55	82
Deed from Pepper to R. G. Dunlap	59	88
Do. from R. G. Dunlap to H. W. Dunlap	60	90
Exhibit D, letters of curatorship	61	91
" E, (F, see original) and G	62	92
" H, John Briscoe's deposition	63	94
" J, Whitford's affidavit	65	96
" K, (see original) and L, a brief of titles	65	97
" M, description of property, &c.	66	97
" N, O, P, and Q	67 & 8	99
" R, answer of H. W. Dunlap	68	101
Citation to H. W. Dunlap	69	102
Exhibit S, certificate of mortgage	69	102
" U, answers of J. Pepper	70	103
" T and W	70 & 71	104
Answers	72	106
Exhibit X, Y, Z, and AA	73	109
Patents to McKiernan, Greisham, Bartlett, and Burney	74 & 75	109
Exhibit No. 1, conveyance from Lilly to Jefferson	76	112
" No. 2, Jefferson bond to Lilly	76	113
" 3 and 4	77	114

	Original.	Print.
Exhibit 5 and 6, copy of inventory	78	115
“ 7, inventory of property of R. G. Dunlap	80	118
“ 8, 9, and 10	81	119
“ 11,	82	121
“ 12 and 13, commission and testimony	82 & 83	121
“ 14, testimony by consent	87	128
“ 15, “ of Robert Ford	88	129
“ 16, “ of George W. Watts	89	130
“ 18,	91	133
Subpœnas to several persons	100 & other	147
Bills of exception	103	151
Judgment	103	153
Motion for new trial	104	153
Petition of appeal	104	154
Appeal bond	105	155
Clerk's certificate	105	155
Plats	106, 107 & 108	156
Appeal from 9th district court and judgment	109	159
Petition for rehearing	112	163
Agreement of parties	117	170
Writ of error	118	171
Bond	119	173
Appeal to United States Supreme Court	120	174

STATE OF LOUISIANA,
Parish of Madison, ninth district court:

JAMES PEPPER and al.
vs.
R. G. DUNLAP.

Be it known and remembered, that on the sixteenth day of April, A. D. eighteen hundred and thirty-nine, the plaintiffs in the above styled suit, by his attorney, filed his petition in said court in the words and figures following, to wit:

To the Hon. Fred. H. Davis, judge of the ninth judicial district, holding court in and for the parish of Madison, and State of Louisiana:

The petition of Sarah H. Evans, James Pepper, and George McCullough, all residing in the city of St. Louis, and State of Missouri, respectfully represent unto your honor, that Richard G. Dunlap, an absentee, residing in the city of Houston, and republic of Texas, is justly indebted to your petitioner in the sum of four thousand and nine hundred dollars, for this, to wit, on the 28th day of April, A. D. 1837, the said Richard G. Dunlap made and executed his certain promissory note in favor of your petitioners, therein styled Sarah H. Evans, James Pepper, and George McCullough, or their order, for the aforesaid sum of four thousand and nine hundred dollars, value received, due on the first day of March, A. D. 1838, payable at the office of the parish judge, for the parish of Concordia, at Vidalia, dated at Milliken's Bend, and signed R. G. Dunlap, with a credit endorsed thereon for the sum of nineteen hundred and forty-seven dollars, as will more fully appear by reference to said note, hereto annexed, and made part of this petition.

Shows, that it was duly presented and amicable demand made, at the place where said note was made payable, for the payment thereof; which being refused, said note was duly protested for non-payment, and notice thereof given to the drawer, as will more fully appear by reference to said protest, hereto annexed, and made part of this petition.

Shows, that the above described note, with others of even date with said note, five in number, in favor of your petitioners, or their order, each for the sum of six thousand one hundred and sixty dollars, due as follows: one due on the first day of March, A. D. 1839; a second, on the first of March, 1840; a third, on the first day of March, 1841; a fourth, on the first day of March, 1842; a fifth due on the first day of March, 1843; all payable at the office of the parish judge, for the parish of Concordia, at Vidalia, was given by said Richard G. Dunlap to your petitioners, as part consideration for the purchase of certain lands, and negroes and stock, farming utensils, being on said land, which is situated in the parish of Madison, and State of Louisiana; for a more particular description of said land, &c., sold by your petitioners to said

Richard G. Dunlap, your honor is referred to the act of sale, hereto annexed and made part of this petition.

Shews, that the said Richard G. Dunlap is indebted to your petitioners in the further sum of six thousand one hundred and sixty dollars, for this, to wit, on the 28th day of April, 1837, at Milliken's Bend, parish of Carroll, the said Richard G. Dunlap made and executed his certain other promissory note in favor of your petitioners, or their order, styled therein Sarah H. Evans, James Pepper and George McCullough, for the sum of six thousand one hundred and sixty dollars, value received, due on the first day of March, A. D. eighteen hundred and thirty-nine, payable at the office of the parish judge of the parish of Concordia, at Vidalia, signed R. G. Dunlap, as will more fully appear by reference to said note, hereto annexed and made a part of this petition.

Shews, that said note was duly presented at the place where payable, and demand made for the payment thereof, which being refused, said note was duly protested for non-payment, and notice thereof given to the drawer, as will more fully appear by reference to said protest, hereto annexed and made part of this petition.

Shews, that said note is identified with the act of sale, above referred to your honor, and was given for the same condition as the first described note.

Shews, that further to secure the payment of the two notes attached to this petition, and now due and payable, together with the other notes described in this petition, not yet due, mentioned in the act of sale, to which your honor is referred, certain lands and negroes, hereafter described, were specially hypothecated and mortgaged unto your petitioners, by name of Sarah H. Evans, James Pepper, and George McCullough; the property so mortgaged is as follows, to wit: Section number twenty-two, of township sixteen, range number fourteen east, in the district of lands north of Red river, Louisiana, containing six hundred and forty acres; also the back concession to said section number twenty-two, of township sixteen, range number fourteen east, in the district of lands north of Red river, Louisiana, in all making twelve hundred and eighty acres; also the following named negroes, slaves, ten in number, to wit, Isam, Clem, Bob, Nelson, Henry, Rachel, Louisa, Ailsey, Saul, Anthony, which said mortgage and hypothecation will more fully appear by reference to the act of mortgage contained in the act of sale, which is hereunto annexed and made part of this petition.

Wherefore, your petitioners pray, that an order of seizure and sale issue against the above described mortgaged property, for cash, to the amount of the two notes described in this petition, as now due and payable, the one for four thousand and nine hundred dollars, with a credit thereon for nineteen hundred and forty-seven dollars, the other for six thousand one hundred and sixty dollars, with interest, and such damage as your petitioners have suffered by the non-payment thereof, with notes for the balance, with approved endorsers, secured by special mortgage upon the property sold, to meet the payment of the other notes described in the act of sale, to which your honor has been referred, as they may each, respectively, become due and payable.

Your petitioners pray, that they may have judgment decreed in their favor for the above, and that an attorney be appointed to represent the absentee in this suit, and that he be served with the requisite notice herein.

Your petitioners further pray, that they have judgment for the costs of suit, together with costs of protest. And your petitioners will, as in duty bound, ever pray, &c.

POINDEXTER & HUNTER,
Attorneys for Petitioners.

Order.

The law and the evidence being in favor of the petitioners, it is ordered by the court, that the order of seizure and sale issue against the land and slaves in the plaintiffs' petition described, and that the same be sold by the sheriff of the parish of Madison, in due course of law, for whole debt, but upon such terms of credit, for the payment of the instalments not yet due, as are provided by the contract of mortgage to plaintiffs' petition annexed.

It is further ordered, that John Briscot, esq., be appointed to represent the absentee.

FRED. H. DAVIS,
Judge 9th district.

PARISH OF MADISON, *April 16th*, 1839.

Petition endorsed.

127.—District court, parish of Madison, James Pepper et al. vs. R. G. Dunlap. Petition for executing process, filed 16th April, 1839.

JOHN T. MASON, *Clerk.*

Note.

$4,900.

On the first day of March, A. D. eighteen hundred and thirty-eight, I promise to pay to Sarah H. Evans, James Pepper, and George McCullough, or their order, the sum of four thousand nine hundred dollars, value received, payable at the office of the parish judge, for the parish of Concordia, at Vidalia.

R. G. DUNLAP.

Milliken's Bend, parish of Carroll, La., April 28, 1837.

Ne varietur. A. J. LOURY, *Notary Public.*

I agree to pay whatever interest, on the residue of this note, which shall be or is unpaid, that may be the bank interest at Natchez.

R. G. DUNLAP.

April 10th, 1838.

Note endorsed.

Received of the within note, at different times, the sum of nineteen hundred and forty-seven dollars.

JAMES PEPPER.

March 2d, 1839.

Protest.

$4,900.

On the first day of March, A.D. eighteen hundred and thirty-eight, I promise to pay to Sarah H. Evans, James Pepper, and George McCullough, or their order, the sum of four thousand nine hundred dollars, value received, payable at the office of the parish judge for the parish of Concordia, at Vidalia.

Signed, R. G. DUNLAP.

Milliken's Bend, parish of Carroll, La., April 28th, 1837.

I agree to pay whatever interest, on the residue of this note, which shall be or is unpaid, that may be the bank interest at Natchez.

Signed, R. G. DUNLAP.

Written on the back of the above note.

Received of the within note, at different times, the sum of nineteen hundred and forty-seven dollars.

Signed, *JAMES PEPPER.*

March 2d, 1839.

State of Louisiana, parish of Concordia:

By this public instrument of protest, be it known, that on this fourth day of March, anno domini one thousand eight hundred and thirty-nine, at the request of Sarah H. Evans, James Pepper, and George McCullough, the holder of the original, whereof a true copy is written above, I, George W. Keeton, parish judge, and ex officio notary public, in and for, and residing in, the said parish of Concordia, went to the office of the parish judge of said parish of Concordia, and State aforesaid, where the said note is made payable, and then and there having and exhibiting the said note, I did present the same to the said parish judge, at his said office, and demanded of him payment thereof, which was by him refused, and finding at the said office, neither the maker of the said note, nor any person for him, to pay, or make arrangement for the payment of the said note, and there not being any funds deposited at the said office to meet the payment of the same, which not being satisfactory, I, the said parish judge, and ex officio notary public, have protested, and by these presents do solemnly protest, against the maker or drawer of the said note, as well as against all and every other person whom it shall, may, or doth concern, for all costs, damages, losses, interests, liabilities, and responsibilities, suffered or incurred, or to be suffered or incurred, for want or failure of the payment of said note.

This done and protested the day, month, and year first herein written, in presence of Edward Sparrow and John R. Hewett, competent witnesses, residing in this parish, who have hereunto signed their names with me, the said judge and notary. And I, the said parish judge and ex officio notary public, have granted these presents under my signature and seal of my office, to serve and avail as occasion may or shall require.

[SEAL.] G. W. KEETON, *P. Judge.*

EDW'D SPARROW,
JOHN R. HEWETT.

To Mr. Richard G. Dunlap.

Sir: Take notice, that a note for the sum of four thousand nine hundred dollars, signed by you, dated at Milliken's Bend, parish of Carroll, La., April 28th, 1837, payable on the first day of March, A. D. eighteen hundred and thirty-eight, and by you drawn, has been by me this day protested for non-payment, and that the holder of said note, Sarah H. Evans, James Pepper, and George McCullough, looks to you for payment thereof as drawer.

G. M. KEETON, *P. Judge*.

Vidalia, parish of Concordia, La., March 4th, 1839.

State of Louisiana, parish of Concordia:

Be it known, that on the fourth day of March, anno domini eighteen hundred and thirty-nine, I, George W. Keeton, parish judge and ex officio notary public, in and for the said parish of Concordia, did protest a note, a true copy of which is on the reverse hereof written, and a notice of which protest, the above is a true copy, I enclosed and directed to the Hon. Richard G. Dunlap, at the city of Houston, in the republic of Texas; and on this fifth day of March, A. D. eighteen hundred and thirty-nine, I personally did put into the post office, at Natchez, Miss., the said notice of protest, it being the nearest post office where said protest was made and addressed as aforesaid, his only known domicil.

And of all which I have made the foregoing process verbal, in presence of Daniel C. Morris and John R. Hewett, competent witnesses, residing in this parish, who have signed with me, the said judge and notary. And I, the said judge and notary, having recorded the said protest notice and the process verbal of notification in my record of protest No. , have granted the same, under my signature and seal of my office, to serve and avail as occasion may or shall require.

[seal.] G. W. KEETON, *P. Judge*.

D. C. Morris,
John R. Hewett.

State of Louisiana, parish of Concordia:

I, George W. Keeton, parish judge and ex officio notary public, in and for the said parish, do hereby certify, that the within and foregoing is a true copy, and correct copy of the original act of protest on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, at Vidalia, this sixth day of March, A. D. 1839.

G. W. KEETON, [seal.]
Parish Judge.

Protest endorsed.

127.—Richard G. Dunlap, note to Sarah H. Evans, James Pepper, and George McCullough. Copy of protest, filed 16th April, 1839.

JOHN T. MASON, *Clerk*.

Fees $5.

Note.

$6,160.

On the first day of March, A. D. eighteen hundred and thirty-nine, I promise to pay to Sarah H. Evans, James Pepper, and George McCullough, or their order, the sum of six thousand one hundred and sixty dollars, value received, payable at the office of the parish judge for the parish of Concordia, at Vidalia.

R. G. DUNLAP.

Milliken's Bend, parish of Carroll, April 28th, 1837.

Ne varietur. A. J. LOURY, *Notary Public.*

Protest.

$6,160.

On the first day of March, A. D. eighteen hundred and thirty-nine, I promise to pay to Sarah H. Evans, James Pepper, and George McCullough, or their order, the sum of six thousand one hundred and sixty dollars, value received, payable at the office of the parish judge for the parish of Concordia, at Vidalia.

R. G. DUNLAP.

Milliken's Bend, parish of Carroll, April 28th, 1837.

State of Louisiana, parish of Concordia:

By this public instrument of protest, be it known, that on this fourth day of March, anno domini one thousand eight hundred and thirty-nine, at the request of Sarah H. Evans, James Pepper, and George McCullough, the holder of the original note, whereof a true copy is above written, I, George W. Keeton, parish judge and ex officio notary public, in and for, and residing in the said parish of Concordia, went to the office of said parish judge, of the said parish of Concordia, at Vidalia, in the State of Louisiana, where the said note is made payable, and then and there having and exhibiting the said note, I presented the same to the parish judge of the said parish and State aforesaid, and demanded of him payment thereof, and which payment was by him refused; and there not being any funds deposited in the said office to meet the payment of the said note, and finding at the said office neither the maker of the said note, nor any person for him, to pay, or make arrangement for the payment of the said note, which not being satisfactory, I, the said parish judge and ex officio notary public, have protested, and by these presents do solemnly protest, against the maker and drawer of the said note, as well as against all and every other person whom it shall, may, or doth concern, for all costs, damages, losses, interests, liabilities, and responsibilities, suffered or incurred, or to be suffered or incurred, for want or failure of payment of said note.

This done and protested, the day, month, and year first herein written, in presence of Edward Sparrow and John R. Hewett, competent witnesses, residing in this parish, who have hereunto signed their names with me, the said judge and notary.

And I, the said parish judge and ex officio notary public, have granted these presents under my signature, and the seal of my office, to serve and avail as occasion may or shall require.

G. W. KEETON, [SEAL.] *P. Judge.*

EDW'D SPARROW,
JOHN R. HEWETT.

To Mr. RICHARD G. DUNLAP.

SIR: Take notice, that a note for the sum of six thousand one hundred and sixty dollars, signed by you, dated at Milliken's Bend, parish of Carroll, April 28th, 1837, payable on the first day of March, A. D. eighteen hundred and thirty-nine, and by you signed and drawn, has been by me this day protested for non-payment, and that the holder of said note, Sarah H. Evans, James Pepper, and George McCullough, looks to you for payment thereof as drawer.

G. W. KEETON, *P. Judge.*

Vidalia, parish of Concordia, La., March 4th, 1839.

State of Louisiana, parish of Concordia:

Be it known, that on this fourth day of *of* March, anno domini eighteen hundred and thirty-nine, I, George W. Keeton, parish judge and ex officio notary public, in and for the said parish of Concordia, did protest a note, a true copy of which is on the reverse hereof written, and a notice of which protest, the above is a true copy, I enclosed and addressed to the honorable Richard G. Dunlap, at the city of Houston, in the republic of Texas, his only known domicil and usual place of residence; and on this fifth day of March, A. D. eighteen hundred and thirty-nine, I did personally put the said notice of protest into the post office at Natchez, Miss., being the nearest post office where said protest was made.

And of all which I have made the foregoing process verbal in presence of Daniel G. Morris and John R. Hewett, competent witnesses, residing in the parish, who have signed with me the said judge and notary. And I, the said judge and notary, having recorded the said protest notice and the process verbal of notification in my record of protest No. have granted the same, under my signature, and the seal of my office, to serve and avail as occasion may or shall require.

[SEAL.] G. W. KEETON, *P. Judge.*

D. C. MORRIS,
JOHN R. HEWETT.

State of Louisiana, parish of Concordia:

I, George W. Keeton, parish judge and ex officio notary public, in and for the said parish, do hereby certify, that the foregoing and within is a true and correct copy of the original act of protest, on file and of record in my office.

In testimony whereof, I have hereunto set my hand, and affixed the seal of my office, at Vidalia, this sixth day of March, A. D. 1839.

G. W. KEETON, *P. Judge.* [SEAL.]

Protest endorsed.

Richard G. Dunlap's note to Sarah H. Evans, James Pepper, and George McCullough. Copy of protest filed, 16th April, 1839.

JOHN T. MASON, *Cl'k.*

Fees, $5 00.

Copy of note.

$6,160.

On the first day of March, A. D. eighteen hundred and forty-three, I promise to pay to Sarah H. Evans, James Pepper, and George McCullough, or their order, the sum of six thousand one hundred and sixty dollars, value received, payable at the office of the parish judge, for the parish of Concordia, at Vidalia.

R. G. DUNLAP.

Milliken's Bend, parish of Carroll, La., April 28th, 1837.

Ne varietur. A. J. LOURY, *Notary Public.*

127.—Filed 3d May, 1842.

JOHN T. MASON, *Cl'k.*

$6,160.

On the first day of March, A. D. eighteen hundred and forty-two, I promise to pay to Sarah H. Evans, James Pepper, and George McCullough, or their order, the sum of six thousand one hundred and sixty dollars, value received, payable at the office of the parish judge, for the parish of Concordia, at Vidalia.

R. G. DUNLAP.

Milliken's Bend, parish of Carroll, La., April 28th, 1837.

Ne varietur. A. J. LOURY, *Notary Public.*

127.—Filed 3d May, 1842.

JOHN T. MASON, *Cl'k.*

State of Louisiana, parish of Madison, ninth district court:

I do hereby certify the foregoing to be a true and correct copy of the original notes on file, and of record, in suit No. 127, styled James Pepper et al. vs. R. G. Dunlap, (seizure and sale,) in this office.

Witness my signature and impress of the seal of said court, this 2d day of June, A. D. 1842.

[SEAL.] JOHN T. MASON,
Clerk of said Court.
By J. W. COUCH, *Dept. Clk.*

Received of John T. Mason, clerk, the originals of which the above are certified copies. June 2d, A. D. 1842.

JAMES PEPPER.

Endorsed.

No. 127.—District court. James Pepper et al. vs. R. G. Dunlap. Copy of notes.

Filed June 2d, 1842.

J. W. COUCH, *Dep. Cl'k.*

$6,160. *Note.*

On the first day of March, A. D. eighteen hundred and forty-one, I promise to pay to Sarah H. Evans, James Pepper, and George McCullough, or their order, the sum of six thousand one hundred and sixty dollars, value received, payable at the office of the parish judge, for the parish of Concordia, at Vidalia.

R. G. DUNLAP.

Milliken's Bend, parish Carroll, La., April 28th, 1837.
Ne varietur. A. J. LOURY, *Notary Public.*

Endorsed.

Filed May 3d, 1842.

JOHN T. MASON, *Cl'k.*

$6,160. *Protest.*

On the first day of March, A. D. eighteen hundred and forty-one, I promise to pay to Sarah H. Evans, James Pepper, and George McCullough, or their order, the sum of six thousand one hundred and sixty dollars, for value received, payable at the office of the parish judge, for the parish of Concordia, at Vidalia.

Milliken's Bend, parish of Carroll, La., April 28th, 1837.

R. G. DUNLAP.

State of Louisiana, parish of Concordia:

By this public instrument of protest, be it known that, on this seventh day of June, anno domini one thousand eight hundred and forty-one, at the request of Sarah H. Evans, James Pepper, and George McCullough, the holder of the original note, whereof a true copy is above written, I, James Dunlap, parish judge and ex officio notary public, in and for, and residing in said parish of Concordia, went to the office of the parish judge for the parish of Concordia, at Vidalia, the place where the said note is made payable, and there having and exhibiting the said note, I presented the same to the judge of said parish, in person, at his said office, and demanded of him payment of said note; which was by said judge refused, as there was no funds deposited at his said office to meet the payment of said note, either by the drawer of said note, or by any other person for him; and no person offering to pay the same, which not being satisfactory, I, the said judge and notary public, have protested, and, by these presents, do solemnly protest against the drawer of said note, as well as against all and every other persons, whom it shall, may, or doth concern, for all costs, damages, losses, interest, liabilities, and responsibilities suffered or incurred, or to be suffered or incurred, for want or failure of the payment of the said note.

This done and protested the day, month, and year first herein written, in presence of Benjamin F. Dunlap and John R. Hewett, competent witnesses, residing in this parish, who have hereunto signed their names with me, the said judge and notary; and I, the said judge and ex officio notary public, have granted these presents under my signa ture, and the seal of my office, to serve and avail as occasion may or shall require.

[SEAL.] JAMES DUNLAP,
Parish Judge and Notary Public.

BENJ. F. DUNLAP,
JNO. R. HEWETT.

State of Louisiana, parish of Concordia:

I, James Dunlap, judge of the parish of Concordia, do hereby certify, that the within and foregoing is a true and correct copy of the original act of protest, as is therein mentioned and expressed, on file and of record in my office.

In testimony whereof, I have hereunto set my hand, and affixed the seal of my office, at Vidalia, this the seventh day of June, A. D. eighteen hundred and forty-one.

[SEAL.]

JAMES DUNLAP, *Parish Judge.*

$6,160. *Note.*

On the first day of March, A. D. eighteen hundred and forty, I promise to pay to Sarah H. Evans, James Pepper, and George McCullough, or their order, the sum of six thousand one hundred and sixty dollars, value received, payable at the office of the parish judge, for the parish of Concordia, at Vidalia.

R. G. DUNLAP.

Milliken's Bend, parish Carroll, La., April 28th, 1837.
Ne varietur. A. J. LOURY, *Notary Public.*

Note endorsed.

Filed 3d May, 1842. JOHN T. MASON, *Clerk.*

Protest endorsed.

127.—Act of protest, R. G. Dunlap note, copy filed 3d May, 1842.
JOHN T. MASON, *Clerk.*

Cost of protest $3; cost of copy $3; $6 paid by R. C. Stockton, esq'r.

Act of sale exhibited.

State of Louisiana, parish of Concordia:

Be it known that, on this twenty-eight day of April, in the year of our Lord one thousand eight hundred and thirty-seven, before me, Alfred J. Loury, a notary public in and for the parish of Carroll, State of Louisiana, duly commissioned and sworn, personally came and appeared Mrs. Sarah H. Butler, now widow Sarah H. Evans, James Pepper, and George McCullough, and Mrs. Louisa Pepper, wife of George McCullough, all citizens of the State of Louisiana, parish of Concordia, who said and acknowledged that, for and in consideration of the sum of one hundred and thirty thousand dollars to them paid by Richard G. Dunlap, of the county of Knox, State of Tennessee, as follows, viz., ninety-one thousand eight hundred dollars, cash in hand paid, the receipt whereof is hereby acknowledged; also Richard G. Dunlap's promissory note favor Sarah H. Evans, James Pepper, and George McCullough, of even date with this act, for the sum of twenty-five hundred dollars, due the first day of March, A. D. eighteen hundred and thirty-eight, payable at the office of the parish judge for the parish of Concordia, at Vidalia; also Richard G. Dunlap promissory note, favor Sarah H. Evans, James Pepper, and George McCullough, of even date with this act, for the sum of four thousand nine hundred dollars, due the first day of March, A. D. eighteen hundred and thirty-eight, payable at the office of the parish judge of the parish of Concordia, at Vidalia. Secondly, Richard G Dunlap's five promissory notes, favour Sarah H. Evans, James Pepper, and George McCullough, of even date with this act, each for the sum of six thousand one hundred and sixty dollars, due the first day of March, A. D. eighteen hundred and thirty-nine, first day of March, A. D. eighteen hundred and forty, first day of March, A. D. eighteen hundred and forty-one, first day of March, A. D. eighteen hundred and forty-two, first day of March, A. D. eighteen hundred and forty-three, all payable at the office of the parish judge for the parish of Concordia, at Vidalia. The five last mentioned notes amount to the sum of thirty thousand eight hundred dollars. All of the above described notes are by me, notary, endorsed "Ne varietur," to identify them with this act.

Now, for and in consideration of the premises, they, the said Mrs. Sarah H. Evans, James Pepper, George McCullough, and Louisa, his wife, have this day granted, bargained, sold, and delivered, and by these presents do grant, bargain, sell, and deliver, with full guarantee against all debts, liens, mortgages, suits, evictions, or incumbrances whatever, unto the said Richard G. Dunlap, here present, accepting and purchasing, for himself, his heirs and assigns, and acknowledging delivery and possession thereof, the following described piece, parcel, or tract of land, and the following named eighteen negro slaves, viz: All that plantation situated above the town of , fronting on the Mississippi river, and composed of the following described lots: Section number twenty-two, containing six hundred and forty acres, and the back concession to said section number twenty-two; also fractional sections number twenty-three, twenty-four, twenty-five, section number fifty-three, and lot number three, of section fifty-four, containing, in all, two thousand two hundred and eighty-eight acres; all of the above named land lies in township number sixteen, range number fourteen east, in the district of lands north of Red river, Louisiana; also the following named eighteen negro slaves: Jim, Isam, Clem, Bob, Sil, Sylvia, Jacob, Nelson, Henry, Old Jacob, Henry, Richeal, Peggy, Caroline, Louisa, Ailsy, Saul, Anthony, which negroes are now on the above named plantation; also all the stock of horses, oxen, hogs, cattle, farming utensils, &c., belonging to said plantation: To have and to hold the above described piece, parcel, or tract of land, and the above named eighteen negroes, slaves, unto the said Richard G. Dunlap, his heirs and assigns, forever. And the said vendors hereby further promise, that they and their heirs shall and will forever warrant and defend the property herein conveyed against all legal claims and demands whatever. The said vendors moreover transfer unto the said purchasers all the rights of action and warranty to which they are entitled against all the former proprietors of the property herein conveyed, subrogating said purchasers to the said rights and actions to be by him enjoyed and exercised in the same manner as they might have been by the present vendors. The parties waive the production of a certificate of non-mortgage on the above described property from the office of the recorder of mortgages for the parish of Concordia, Louisiana, and release me, notary, from any responsibility.

Now, to secure the full and punctual payment of the above named seven promissory notes, at the time and manner stipulated, the said Richard G. Dunlap hereby specially mortgages and hypothecates in favour of the said Sarah H. Evans, James Pepper, and George McCullough, section number twenty-two, of township sixteen, range number fourteen, east, in the district of lands north of Red river, Louisiana, and containing six hundred and forty acres; also the back concession to said section number twenty-two, of township sixteen, range number fourteen, east, in the district of lands north of Red river, Louisiana, in all making twelve hundred and eighty acres; also the following named ten negro slaves, now on said plantation, viz: Isam, Clem, Bob, Nelson, Henry, Rachall, Louisa, Ailsy, Saul, Anthony. And the said Richard G. Dunlap promises and binds himself not to sell, alienate, or mortgage any part of the property as herein mortgaged, nor dispose of the same, in any manner, until the causes and effects for which the mortgage is granted shall have been fully satisfied, and until a release of this mortgage be given; and it is understood, by the parties, that the mortgage on the above named ten negro slaves shall be released as soon as the two first promissory notes are satisfied, amounting to seven thousand four hundred dollars, due first of March, A. D. eighteen hundred and thirty-eight.

And now, to these presents, personally came and intervened Mrs. Louisa Pepper, wife of George McCullough, and by him duly authorized, who declared unto me, notary, that, in becoming a party to these presents, it is her wish and intention to release, in favour of the said Richard G. Dunlap, the above described land and premises, together with the above named eighteen negroes, as herein conveyed, from any rights, claims, mortgages, or privileges, to which she may be entitled, whether resulting from her marriage with the said George McCullough, or otherwise. Whereupon, I, Alfred J. Loury, the said notary, did inform the said Mrs. Louisa Pepper, apart and out of the hearing of her said husband, that she had by law a legal mortgage upon all the property of her said husband for the restitution of her dotal effects, whether brought in marriage, or subsequently acquired for the restitution of her paraphernal effects of which her said husband had the administration or enjoyment, for debts by her contracted, and with her said husband, and for nuptial presents. And the said Mrs. Louisa McCullough did, thereupon, declare to me, the said notary, that she was fully acquainted with the nature and extent of her claims and privileges on the property of her said husband, and that she did persist in her intention to approve and ratify this act, and to renounce, not only all the rights, claims, mortgages, and privileges, herein before enumerated and described, but all others, of any nature or kind whatever, to which she may be entitled by any laws, now or heretofore in force, in the State of Louisiana. And the said George McCullough, being now present, aiding and authorizing his said wife in the execution of these presents, she, the said Mrs. Louisa McCullough, declared, that she did and does hereby formally renounce, in favour of the said Richard G. Dunlap, and for the purpose aforesaid, all her said rights, mortgages, and privileges, and particularly the general and tacit mortgage which by law she has on all the property of her said husband, hereby consenting to renounce and relinquish her said rights in favour of the said Richard G. Dunlap, and binding herself and her heirs at all times to sustain and acknowledge the validity of this renunciation.

This done and passed the day and year first above written, in presence of John V. Wren and Solomon C. Whitely, witnesses hereto required, and residing in this parish, who have signed these presents, together with the parties and me, the notary.

Signed, SARAH H. EVANS,
" JAMES PEPPER,
" LOUISA McCULLOUGH,
" GEORGE McCULLOUGH,
" R. G. DUNLAP.

Witnesses: JOHN D. WREN,
J. C. WHITELY.

A. J. LOURY, *Notary Public.*

State of Louisiana, parish of Madison:

I certify the foregoing act to be a true and correct copy of the original act as on file and record in my office at Milliken's Bend, Louisiana.

In testimony whereof, I have granted this copy, and have hereunto set my hand and affixed my seal, this sixteenth day of April, A. D. 1839.

A. J. LOURY, [SEAL.]
Notary Public.

Act endorsed—Copy.

Sarah H. Evans, James Pepper, and George McCullough. Conveyance to Richard G. Dunlap. Filed 16th April, 1839.

JOHN T. MASON, *Cl'k.*

Notice of seizure.

JAMES PEPPER et al.
vs.
R. G. **DUNLAP.**

Ninth district court, parish of Madison, State of Louisiana.

To R. G. Dunlap, or John Briscoe, his attorney:

Please take notice, that on the sixteenth day of April, 1839, there was rendered in the above entitled suit, by the judge of the ninth judicial district, an order of seizure of sale against the property hereinafter described, to pay and satisfy to the plaintiffs in said suit the sum of two thousand nine hundred and fifty-three dollars, with interest thereon at the rate of five per cent., from the first day of March, A. D. 1838, till paid; and the further sum of six thousand one hundred and sixty dollars, with five per cent. interest from the first day of March, A. D. 1839, until paid; and four other notes, of even dates and sums, due as follows: one on the first day of March, 1840; the second, on the first day of March, A. D. 1841; the third, due first of March, A. D. 1842; and a fourth, due on the first day of March, A. D. 1843, with interest, as aforesaid, to wit: all that tract of land situated on the Mississippi river, in this parish, in section number twenty-two, of township sixteen, range number fourteen, east, in the district of lands north of Red river, Louisiana, containing six hundred and forty acres; also, the back concession to said number twenty-two, of township sixteen, range number fourteen, east, in the district of lands north of Red river, Louisiana; in all, making twelve hundred and eighty acres; also, the following named negroes, slaves, to wit: Isam, Clem, Bob, Nelson, Henry, Rachel, Louisa, Ailsey, Saul, and Anthony, together with all the improvements, and privileges, and appurtenances unto the above described land belonging, or in any wise appertaining.

Witnesses, the Hon. B. G. Tenny, judge of the said court, this 19th day of Nov., A. D. 1840.

[SEAL.] GEO. D. SHADBURNE,
Deputy Clerk.

Sheriff's return.

Received on the 19th day of November, 1840, and served on the 23d day of the same month and year, by handing a certify copy of this notice to John Briscoe, in person, at Richmond, in the parish of Madison, La., the said John Briscoe being the attorney of record of the said R. G. Dunlap. Service, 75 cts.

THOMAS B. SCOTT, *Sheriff.*

(*Endorsed.*)—127; 9th district court, James Pepper et al. vs. R. G. Dunlap. Notice of seizure filed 27th Nov., 1840.

JOHN T. MASON, *Clk.*

Petition of appeal.

To the hon. the judge of the 9th judicial district, holding sessions in and for the parish of Madison, State of Louisiana:

The petition of Richard G. Dunlap, a resident of the republic of Texas, with respect represents, that on the sixteenth day of April, 1839, a certain final judgment, or order of seizure and sale, was rendered by your honor, against your petitioner, at the suit of James Pepper, Sarah H. Evans, and George McCullough, residents of the State of Missouri, being suit No. 127 on the docket of said court, for the sum of nine thousand one hundred and fifteen dollars, with interests and costs, and decreeing that the property of your petitioner be seized and sold to satisfy said judgment. Your petitioner alleges, that he will sustain irreparable injury by said judgment, if not relieved by appeal; that the same is erroneous, and ought to have been in favor of your petitioner. Whereupon, petitioner prays a suspensive appeal from said judgment, to the supreme court of the State, returnable at the next term of said court, to be holden at Alexandria on the first Monday in October next; and as in duty bound, &c.

BRISCOE, TENNY & DUNLAP.

Order.

Let the appeal be granted, as prayed for, on petitioner's entering into bond and security, as required by law, in the sum of fifteen thousand dollars, conditioned according to law, and returnable to the supreme court of Louisiana, at Alexandria, on the first Monday of October next.

FRED. H. DAVIS,
Judge 9th dist.

PARISH OF MADISON, *April* 17, 1839.

(*Endorsed.*)—127; James Pepper et al. vs. Richard G. Dunlap. Petition of appeal filed 17th April, 1839.

J. T. MASON, *Clk.*

Bond.

Know all men by these presents, that we, Richard G. Dunlap, as principal, and Aaron Lilly, Thompson L. King, and John E. Hunter, all residing in the parish of Madison, State of Louisiana, as security, are held and firmly bound, in solido, unto Jas. Pepper, Sarah H. Evans, and George McCullough, in the sum of fifteen thousand dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, and executors, and administrators, firmly by these presents. Whereas, the said Richard G. Dunlap has this day applied for and obtained an order of appeal from the judge of the 9th judicial district of the State of Louisiana, from a definitive judgment, or order of seizure and sale, in a case in which James Pepper, Sarah H. Evans, and George McCullough, are plaintiffs, and the said Richard G. Dunlap is defendant, being No. 127 on the docket, in Madison parish. Now, the conditions of the above obligations are such, that if the said

Richard G. Dunlap shall prosecute his said appeal with success, or shall pay, or cause to be paid, all costs and damages which may accrue to said plaintiffs, in case said appeal shall have been improperly obtained, then this obligation shall be null and void; otherwise to remain in full force and virtue.

In testimony whereof, we have hereunto set our hands and seals, this seventeenth day of April, A. D. 1839.

Signed,
R. G. DUNLAP,
T. L. KING,
JOHN E. HUNTER,
AARON LILLY.

Attest: JN. T. RICHARDSON,
B. G. TENNY.

(*Bond endorsed.*)—127; James Pepper and al. vs. Richard G. Dunlap. Bond filed 17th April, 1839.

JOHN T. MASON, *Clk.*

Citation of appeal.

JAMES PEPPER et al.
vs.
RICHARD G. DUNLAP.
} No. 127.

9th judicial district court, parish of Madison.

To Sarah H. Evans, James Pepper, and George McCullough, plaintiffs and appellees, of the State of Missouri:

Whereas, Richard G. Dunlap, appellant, has filed his petition and obtained an order of appeal from the judgment rendered in the above entitled suit, and has given bond and security, according to law; now, therefore, you are hereby cited to be and appear in the supreme court of Louisiana, to be holden at Alexandria, in this State, on the first Monday in October next, to answer to said petition of appeal, according to law.

Witness the Hon. F. H. Davis, judge of 9th district court, parish of Madison, this 27th day of May, A. D. 1839.

[SEAL.]

JOHN T. MASON,
Clerk of said court.

Sheriff's return.

Received, parish of Concordia, La., May 28th, 1839, a certified copy of the petition of appeal, and of this citation, and served them the same day, by leaving them with Alexander Hunter, esq., one of the plaintiffs' attorneys, at the office of Poindexter & Hunter, in this parish. No service was made on the plaintiffs, as they were out of this State.

EDWARD SPARROW,
Sheriff of the parish of Concordia.

(*Endorsed.*)—127; James Pepper et al. vs. Richard G. Dunlap. Citation of appeal filed 21st June, 1839. Service, &c., $2 00.

JOHN T. MASON, *Clk.*

JAMES PEPPER et al.
vs.
R. G. DUNLAP.

On motion of counsel for the plaintiffs, it was ordered, that a certiorari do issue to the clerk of the 9th judicial district court in and for the parish of Madison, to correct and supply certain errors and omissions in the record filed by the appellant in this case, and all such further order as may be necessary, and cause continued.

I certify the foregoing to be a true copy, taken from the minutes of the supreme court for the western district of the State of Louisiana, at Alexandria.

Given under my hand, and seal of said court, at Alexandria, on this 8th day of August, A. D. 1840.

[SEAL.]

A. L. BRINGHURST, *Dy. Clk.*

On Tuesday, the seventeenth day of November, A. D. 1840, the following entry was made on the minutes of said court:

JAMES PEPPER et al.
vs.
R. G. DUNLAP.
No. 127.

Appealed to the supreme court of Alexandria.

On motion of W. L. Poindexter, esq., of counsel for the plaintiffs and appellees, the opinion and decree of the supreme court, in this case, was filed, and ordered to be spread upon the minutes; and is in the words and figures following, to wit:

JAMES PEPPER et al.
vs.
R. G. DUNLAP.

Appeal from the court of the ninth judicial district for the parish of Madison.

This is an appeal from a judgment or order of seizure and sale, granted on a notarial act of sale of certain property sold by plaintiffs to defendant for a large amount, a great portion of which was paid in cash, at the time of sale, and the balance to be paid at certain terms of credit, seven notes were given for the respective amounts of the several instalments. The first note was regularly paid, but the second and third remaining unsatisfied, except a sum of $1,947 on the second. The plaintiffs sued out the order of seizure and sale appealed from, to satisfy the amount due on said two notes; the other four notes being not due at the time of the application, the plaintiffs only annexed to their petition the two notes of which they seek to recover, but pray that the property seized be sold to satisfy the whole debt, according to act 686 of the code of practice; it is to be remarked, that the act of sale contains a stipulation, from which it appears, that, after the payment and satisfaction of the two first instalments, amounting together to $7,400, the mortgage on ten slaves should be released; but the defendant has only paid $4,447, and there remains due $2,953, now a part of the claim set up in plaintiffs' petition.

The plaintiffs contend there is no legal act of mortgage, because the notary who received it was a notary for the parish of Carroll, and the act appears to have been passed in the parish of Concordia; and he objects also to the protest of one of the notes, which appears to be signed by G. W. Hewett, instead of the parish judge, G. Keeton; on examining the record, we have convinced ourselves that these apparent discrepancies are mere clerical errors, which are immaterial to the decision of this cause; previous to copying the caption of the act the clerk, instead of copying "Parish of Carroll," wrote "Parish of Concordia," but from the context of the act, from the certificate of the notary, and from the dating of the notes, executed at the same time, it is clear that the act was passed in that part of the parish of Carroll which is now annexed to the parish of Madison; the name of G. W. Hewett, at the foot of the protest, was clearly intended to be G. W. Keeton, as the body of the protest shows it was done by Keeton, and the certificate of notice, which immediately follows, is signed by him.

It is further agreed, that the notes not being paraphed there is nothing by which they could be identified with the act of mortgage; it is true, the identification of the notes annexed to the act of sale does not appear by the usual paraph, "Ne varietur," but on a comparison of the dates of the notes with the sale, and the circumstances of these having been executed according to the terms and conditions of the sale, are sufficient to make us presume that they are the same notes alluded to in the notarial act, filed with and made a part of the plaintiffs' petition, unless the contrary be shown. 7 La. R., 468.

The next objection, and this we consider the most important, is, that the judgment of the lower court acts on the notes, which, not being due, were not represented; that plaintiffs have exhibited no evidence of *there* being the holders of said notes, and that no executory process can issue, before the judge at Chambers, in the absence of any proof which is an ordinary issue of the plaintiffs, would have to advise before a recovery could be had against defendant.

Plaintiffs in seeking to enforce their rights on the notes due, pray that the property be seized and sold to satisfy the whole debt, under the article 686 of the code of practice. They do not claim the amount of the four last notes, but require substantially, and in effect, that, in proceeding to the sale of the property, in satisfaction of the sum due them, the purchasers thereof to be put, as to the balance of the price, in the place of the original debtor, on his paying said balance to the holders of the other notes, according to the terms of the original contract. The mortgage is, in its nature, indivisible, and prevails over each and every portion of all the immoveables subject to it, C. C., art. 3242; if so, how can property, subject to a special mortgage, be sold to satisfy a part of the debt, 1037-

the whole of which the mortgage secures? Would the purchaser acquire such title as he is legally entitled to? And would he not, on the contrary, have to run the danger of being disturbed for the payment of the balance of the debt, altho' the price of his purchase would be the full value of the property? Such proceedings would, in our opinion, be met with such difficulties and inconveniences, that an injury must necessary result to the other of the parties; and we cannot sanction the doctrine, that the creditor of a part of a debt, secured by special mortgages for which notes have been given, may be allowed, or must be restained to seeking and obtaining the satisfaction of his claim, and of the sale of the property mortgaged for the whole, without any regard to the right of those who may be the holder of the other notes; and with an entire disregard of the consequences as to the purchaser of the property. Our laws being silent on this subject, we must reason by analogy. In the case of a seizing creditor who has a privilege or special mortgage on the property seized, in preference to other privileges or special mortgages, the property must be sold at any price, altho' the purchase money be not sufficient to satisfy all the privileges and morgages with which it is burdened; C. of P., art. 685; in such case the sheriff is to require the payment of the price only, to the amount of the privileges or special mortgages of the seizing creditor, and the purchaser keeps the balance, to be by him applied (if there be any surplus) to paying the special mortgages existing on the property, subsequent to that of the suing creditor. Code of P., art. 707.

The purchaser is bound for nothing beyond the price of the adjudication; and if, after paying the suing creditor there remains nothing, the sheriff must give him a release from the inferior mortgages; C. C., art. 708. In order to obtain the satisfaction of their claims, so far as the surplus of the adjudication may amount to an hypothecary, action lies against the purchasers of the property seized and sold, and the creditors who have said privileges and mortgages may proceed in the same manner, and under the same rules and restrictions, as are applicable to a third possessor of mortgaged property; C. C., art. 709. It is clear, then, from these articles, that the purchaser of the property is personally bound for the surplus of the adjudication, still secured by special mortgage on the property sold, and that he holds said surplus in his hands, subject to the claim or call of the creditors who have the inferior mortgages, and who had nothing to do with the sale from which said surplus proceeded; and that when it is demanded of him, if he does not pay it, he is subject to being proceeded against in the same manner as if he were a third possessor. This, it seems to us, would be a safe and proper rule to adopt, in a case like the present one, when the different instalments are secured by the same mortgage, and when the rights of the creditors are of equal dignity; and we cannot see any good reason why, in the absence of any law, it should not be adopted. The jurisprudence of this court has established, that sheriffs are required to execute process, issued on executory proceedings, in the same manner as in ordinary cases of fi. fa., 8 La. R. 58., C. P., art. 745, and according to the article 686 of the same code; a seizing creditor who has a privilege or special mortgage on the property seized for a debt, of which all the instalments are not yet due, may demand that the property be sold *for the whole of the debt*, provided it be on such terms of credit as are granted to the debtor by the original contract for the payment of such instalments as are not due. There is nothing in this law that requires the creditor, to whom the right is allowed, to shew that he is either the holder of the notes given for such instalments as have not expired, or the creditor of such part of the whole debt as may not be due; and, as the law does not make any distinction, we are not disposed to make any; we think, therefore, that we may safely establish, as a rule of practice, that when a seizing creditor only sues for such instalments of a debt secured by privilege or special mortgage as are due, the property so mortgaged is to be sold for the whole of the debt, on such terms of credit as are granted by the original contract, altho' such creditor does not show that the subsequent instalments belonged to him, or that he is the holder of all the notes mentioned in the contract of mortgage; and it suffices, that the several instalments as are not due be mentioned; in the petition this appears to have been done in this case; and we are of opinion, that the judge *a quo* did not err in ordering the sale of the property mortgaged, as prayed for in plaintiffs' petition. But the defendant contends, that with regard to the ten slaves under the stipulation contained in the contract of mortgage, a part of the sum, $7,400, having been paid, the sheriff should not proceed any further against said slaves, or those which might remain, after the receipt of the balance of $2,753, and that beyond said balance the claim by mortgage should be restricted to the land. The stipulation alluded to is as follows, "and it is understood by the parties, that the morgage on the above named ten slaves shall be released as soon as the two first promissory notes are satisfied, amounting to $7,400, due first of March, 1838." It seems to us, that, in order to entitle himself to the benefit of this stipulation, the defendant should have shown that he has satisfied the condition on which the release of the mortgage of the ten slaves depends; and that, therefore, having not satisfied the two first promissory notes, he cannot now be allowed to claim his release. It is perfectly clear to us, that the condition cannot be divided, and that we cannot understand the clause in the act to mean, that the ten slaves are only mortgaged to satisfy $7,400; but that, on the contrary, said slaves being mortgaged for the whole of the debt, they should be released, provided the sum of seven thousand 400 dollars, due on the two first notes, be regularly paid, which was not done. It is therefore ordered, adjudged, and decreed, that the judgment of the district court be affirmed, with costs.

I certify the foregoing to be a true copy taken from the records of my office. Given under my hand and seal of court, as deputy clerk of the supreme court for the western district of the State of Louisiana, at Alexandria, on this 20th day of October, A. D. 1840.

A. L. BRINGHURST, *Dy. Clk.* [SEAL.]

Endorsed.

James Pepper et al., judgment vs. R. G. Dunlap. Filed 17 November, 1840.

JOHN T. MASON, *Clk.*

Clerk costs supreme court, $16 25.

Petition and order of injunction.

To the honorable the judge of the ninth judicial district of the State of Louisiana, holding sessions of the district court in and for the parish of Madison.

The petition of Hugh W. Dunlap, residing in said parish, respectfully shows: That on the 20th day of December, A. D. 1836, Richard G. Dunlap purchased from Mrs. Sarah H. Evans, James Pepper, George McCullough, and his wife, Louisa McCullough, a certain farm or cotton plantation, negroes, stock of horses, cattle, farming utensils, and bank stock, lying and being in the parish of Concordia, now parish of Madison, State of Louisiana, on the Mississippi river; for a more full description of the property and the contract, your petitioner refers to said contract, which is marked A, and annexed to prayed to be taken as part of this petition.

Your petitioner further shews, that in pursuance of said agreement, on the 28th day of April, A. D. 1837, said vendors executed a conveyance by authentic act to said R. G. Dunlap, a copy of which is herewith annexed, marked B, and prayed to be taken as part of this petition.

Your petitioner further shews, that on the 18th day of April, A. D. 1839, said R. G. Dunlap, for the consideration of one hundred and thirty thousand dollars, by authentic act duly recorded, sold and conveyed said property to your petitioner, which will more fully appear by reference to a copy of the act of sale hereto annexed, marked C, and prayed to be taken as part of this petition; which act of sale has been duly recorded in the office of the parish judge for Madison parish, of Louisiana, the property lying and being in said parish.

Your petitioner further shows, that to his great surprise and astonishment the said Mrs. Sarah H. Evans, James Pepper, George McCullough, and Louisa McCullough, his wife, have obtained in suit in your honorable court, No. 127, styled James Pepper et al. vs. R. G. Dunlap, an order of seizure and sale against twelve hundred and eighty acres of said land and ten of said slaves; and that the sheriff of the parish of Madison had seized and advertised said property for sale, to pay and satisfy certain notes of said R. G. Dunlap, alleged to be given for the purchase of said property, and amounting to dollars.

Your petitioner being the owner of said property as a *bona fide* purchaser for a valuable consideration, opposes said order of seizure and sale on the following grounds, to wit:

1st. That said vendors claim said property as the only heirs and legal representatives of Cicero Jefferson, (alias Joseph Pepper,) Jesse and Maxwell Pepper, and represented themselves to be such; and that, in fact, one Joseph M. Looney, and his son, William B. E. Loony, only child and heir of Delany E. Evans, wife of said J. M. Loony, allege themselves entitled to a part of said property, as the half sister of the said Joseph Pepper, husband and son of said half sister of said Cicero Jefferson, (alias Joseph Pepper,) Jesse and Maxwell Pepper, deceased, they having died without issue; said Joseph M. Loony and his son, William B. E. Loony, have employed counsel, and have ordered suit to be brought against your petitioner for the interest of said half sister, Mrs. Delany E. Evans, who married said Joseph M. Loony, and died in August, A. D. 1835, leaving her husband and two children, William B. E. Looney and Sarah Louisa Looney; the latter died in February, A. D. 1836, a minor, and without legal descendants.

2d. That said vendors have not complied with the contract with said R. G. Dunlap, by making to him a good and sufficient title to all the land sold by them, and one that is paramount to all others, as they were bound to do, when the first payment of fifteen thousand dollars was paid, as will appear by reference to exhibit A. There is no regular chain of title to section No. twenty-two, which was one of the tracts sold and conveyed, as will appear by reference to exhibit B, the title to said tract or section of land being now, as your petitioner is informed and verily believes, in the United States; and that it is entirely out of the power of said vendors to make a good title to said 22 section to petitioner or said R. G. Dunlap; and that said vendors, or Joseph Pepper, their author, purchased said section of land with a full knowledge that the title to the same was in the United States, and without warranty; and knowing they were without title, the vendors wilfully and knowingly practised deception, impositions, and misrepresentations, in relation to said title, at the time making the sale to said R. G. Dunlap, as is hereafter set forth.

4th. That said vendors having conveyed said section 22, with a general warranty, and having no right to the same, they immediately become liable on their warranty, and a right of action accrued to the vendee for the full value of said section of land and the improvements, which your *petition* avers is worth the sum of fifty thousand dollars, being more than the whole amount claimed to be due to said vendors by said R. G. Dunlap. And your petitioner avers, that he is informed and verily believes, that it is legally out of the power of said vendors to make a good title to said section 22, the same being claimed as a donation claim to James James; the commissioners for adjudicating the donation claim, (as they are called,) having confirmed a claim to said James James, lying about five or six miles from said section 22, and the heirs of said James James have by their act accepted said confirmation, they having sold the same, and the purchaser is now living on the same; and that by law no settler was authorized to have more than one donation of 640, and a confirmation having been made to them of a different tract from section 22, and accepted by the heirs of James James, they and their assigns are forever barred from successfully setting up any claim to any other tract, and that said section 22 is liable to be set up at public auction by the United States and sold to the highest bidder.

Your petitioner further shows, that John G. Pottinger and wife and others have commenced a suit in the district court in and for the parish of Madison against him, to recover one of the negro men sold by said vendors, of which they have notice. Your petitioner believes that it is unjust and iniquitous that his property should be sold to pay the debts of R. G. Dunlap, when it clearly appears that said vendors are, in fact, largely indebted to him, on a fair and equitable adjustment of the rights between them. Your petitioner states, that he is very much injured by said vendors not having made a good title to said property, and that by virtue of warranty from said R. G. Dunlap, as will appear by reference to exhibit C, he is entitled to recover from said vendors the value of section 22 and the improvements; also, the value of that portion of said property that may be adjudged and set apart to Joseph M. Loony and his son, William B. Loony, in the suit they have ordered to be brought against your petitioner; also, for the value of the negro man sued for, if he should be recovered; which will amount to a large sum over it—above the amount claimed to be due by R. G. Dunlap to said vendors.

Your petitioner insists, that he is entitled to whatever would be a fair ratable value of said section of land, with the balance of the 2,280 acres, containing, in said purchase, section 22, being worth more than double as much as the same quantity of the other land is worth, said section fronting on the river, to wit, the sum of fifty thousand dollars.

Your petitioner further represents, that when said vendors were about making the authentic conveyance of said property to R. G. Dunlap, the latter called on them to produce the title papers to the land, that he might examine the same, and see whether there was a regular chain of title to the same, according to the conditions of the original agreement, and that James Pepper, who was the person he had contracted with for himself, and as agent of the other vendors, and which contract has been ratified by them, said to him, that the title papers were in the Citizens' Bank of Louisiana, at New Orleans, and that the title was good, when, in fact, the title papers to section 22 *was* never filed in the bank, but were then in the possession of said James Pepper and said R. G. Dunlap, confidently believing the representations of said James Pepper about said title papers, executed his notes for that portion of the consideration money not paid without the production of said title papers, which he would not have done had he known the true situation of said titles.

Your petitioner further shews, that by the terms of the contract, set forth in Exhibit A, the said R. G. Dunlap was entitled to all the bank stock said vendors were entitled to in the Citizens' Bank of Louisiana, as subscribers for said stock; the vendors having represented, as petitioner is informed and verily believes, they would be entitled to fifty thousand dollars of stock in said bank; yet the said James Pepper, after he had entered into the said contract, marked and exhibited A, binding himself on the vendors to assign whatever stock (meaning bank stock in the Citizens' Bank of Louisiana,) or to retain the same, as might best suit the interest of the said R. G. Dunlap, wrongfully and illegally, with the intention, as petitioner believes, to defraud the said R. G. Dunlap, withdrew their subscription, or released the same to the bank; all of which was without the knowledge and consent, and very much against the will and interest, of the said R. G. Dunlap; said bank stock is said to be worth twenty per cent. premium; that premium, at that rate ten thousand dollars, or the amount, the said vendors represented they were entitled to and would get; that said R. G. Dunlap believed he was getting, when he entered into said contract, and your petitioner now claims a credit on the notes of R. G. Dunlap to the value of the premium on said bank stock, to wit, of a credit of ten thousand dollars; said release or withdrawal of their subscription of bank stock was done after the execution of the first contract, and before the authentic conveyance of the property on the 28th of April, A. D. 1837; yet the title papers were still left in the said bank at New Orleans, or that portion of the title that was filed for the purpose of procuring said stock in the said bank, and not exhibited to said R. G. Dunlap, as stipulated by said contract.

Your petitioner is at a loss to conjecture why said papers should have been left in bank after the release was made of all the interest the vendors were entitled to of stock in said bank, unless it was the better to enable them to defraud the said R. G. Dunlap, by falsely representing the title to said land to be good, when they knew to the contrary, and to have some reason to assign to him for not producing said title papers.

Your petitioner further shews, that Sarah A. Graves, (formerly the wife of Moses Kerkendall,) and her present husband, Ezekiel Graves, have notified your petitioner that she, the Sarah A. Graves, claims a right to, and intends to bring a suit for, four hundred acres of said land, being a part of said original purchase, the same being a part of the same land fronting on the river, which is very valuable, to wit, twenty thousand dollars.

Your petitioner states, that he has frequently offered to pay said vendors the amount claimed to be due by the R. G. Dunlap to them, on their complying with their original contract with said R. G. Dunlap, by their making him a good and sufficient title to said land, and assigning or transferring the bank stock of the Citizens' Bank of Louisiana, as they were bound to do.

Your petitioner is now ready and willing to comply with the said contract, and ever has been, on the part of the said R. G. Dunlap, whenever said vendors shall comply on their part with said contract.

Wherefore your petitioner prays, that Mrs. Sarah H. Evans, James Pepper, and George McCullough, and his wife, Louisa McCullough, all, with the exception of the said James, residing in St. Louis, Missouri, and the said James, residing in the parish of Madison, may be made parties to this suit, and duly cited to answer; that they, and the sheriff of said parish, may be enjoined from selling your petitioner's property upon the aforesaid order and writ of seizure and sale, until the further order of this court, and this injunction upon trial be made perpetual; that the said defendants be enjoined from selling, or in any manner transferring, the notes of said R. G. Dunlap, given by him for the purchase of said property, and mentioned in the deed of sale to him, and that said notice, upon the trial of this cause, be ordered to be delivered up to your petitioner; that petitioner be allowed and adjudged to recover ten thousand dollars damages, the value of the said Citizen's Bank stock of which the said R. G. Dunlap and petitioner have been illegally and fraudulently deprived by said defendants; that petitioner be allowed and decreed to have deduction from the amount of the price stipulated to be paid said vendors for said property, to wit, fifty thousand dollars, the comparative and fair value of section No. 22, *under a good title*, with the price given for the whole property by the said R. G. Dunlap; that petitioner be permitted to retain in his hands, subject to final decision in the suit to be brought, the assessed value of said property, or that portion of said property inherited by Delaney E. Evans, as half-sister of said Joseph Pepper, also the value of said slave sued for as aforesaid, and the value of the land threatened to be sued for by said Sarah H. Graves and her husband, and that petitioner recover of said defendants, *in solido*, to wit, forty thousand dollars, or such balance as may be found, due petitioner, upon a full and fair settlement of the whole affair.

That a curator *ad hoc* be appointed for the absentees, to defend them in this suit; that petitioner have leave to take out commissions to take testimony in and out of the State, and for all such other and further relief as equity, justice, and the nature of the case may require, and for general relief in the premises, &c., &c.

RICHARDSON & STACY,
Atts. for Pet'r.

Having been consulted as counsel upon the subject-matter of the above petition, I therefore recuse myself and dec*lair* acting thereon.

Signed at Chambers, this 14th day of December, A. D. 1840.

B. G. TENNY,
Judge 9th district.

Affidavit.

Before the undersigned authority, personally appeared Hugh W. Dunlap, plaintiff, in the foregoing petition, who, being duly sworn, makes oath, that the facts stated, as within his own knowledge in said petition, are true, and those not stated, as within his knowledge, he believes to be true; that all the facts and allegations in said petition contained are true, according to the best of his knowledge and belief; that suit has been commenced by John G. Poutinger and wife et al. in the district court for the parish of Madison, to recover one of the slaves purchased as set forth in said petition; that suit is about to be brought by her legal representatives to recover of this deponent the interest in said property described in said petition of Mrs. Delony H. Evans, half-sister of Joseph Pepper; that deponent has been notified of the claims and intentions of Sarah Graves, and her husband, Ezekiel Graves, as set forth in said petition; that deponent is in danger of being from said section 22, in said petition described, and has just reason to fear, and does fear, that he shall be disquieted in his possession of said section by the Government of the United States, which is, as deponent believes, and was, at the date of the sale to R. G. Dunlap, the entire and exclusive owner of said section; and that the foregoing facts, in the opinion of deponent, render an injunction necessary.

H. W. DUNLAP.

Sworn to and subscribed before me, this 14th day of Dec., A. D. 1840.
JAMES DUNLAP, *P. Judge.*

Order.

PARISH JUDGE OFFICE.

State of Louisiana, parish of Madison:

By reason of the law, Code of Practice, articles 739 and 740, acts of legislature A. D. 1839, page 88, and the evidence, it is ordered, that an injunction issue, as prayed for in the foregoing petition, without petitioner's giving bond and security; and that James Pepper, esq., attorney at law, residing in said parish, be appointed curator *ad hoc* to defend the absentees in this suit.

Done and signed this sixteenth day of February, A. D. *A. D.* eighteen hundred and forty-one.

RICH'D CHA. DOWNS, *parish judge,*
acting as judge of the district court, 9*th district of La.*

Petition endorsed.

127, ninth district court, parish of Madison, James Pepper et al. vs. R. G. Dunlap, No. 127. Petition and order of injunction filed 16th February, 1841.

JOHN T. MASON, *Clk.*

RICHARDSON & STACY.

Bond.

State of Louisiana, parish of Madison:

Be it known and remembered, that we, Hugh W. Dunlap, as principal, and Wm. S. Parham and John Milliken, as sureties, all residing in the parish of Madison, and State aforesaid, are held and firmly bound unto James Pepper, a resident of the parish aforesaid, Sarah H. Evans and George McCullough, who reside in the county of St. Louis, State of Missouri, in the sum of forty thousand dollars, lawful money of the United States, for the payment of which we do hereby bind ourselves, in *solido*, our heirs, executors, administrators, and assigns, firmly by these presents, this 9th day of June, 1841.

Now, the condition of the above obligation is such, that the above named Hugh W. Dunlap has prayed and obtained an order from the parish judge of said parish, acting as judge of the said ninth district court for said parish, allowing him a suspensive appeal from a final judgment rendered against him in said court, in a certain suit styled

James Pepper and al. vs. R. G. Dunlap, No. 127, whereby an injunction obtained by said Hugh W. Dunlap in said suit was dissolved, with interest, damages, and costs, returnable to the next term of the supreme court of the State of Louisiana, appointed to be holden at Alexandria, on the first Monday of October, 1841. Now, if the said Hugh W. Dunlap shall prosecute said appeal with effect, or well and truly satisfy such judgment as may be rendered by said appellate court in the above styled suit, and all damages that may accrue to said appellees in consequence of said appeal, then the above obligation to be void, otherwise to be and remain in full force and virtue.

H. W. DUNLAP,
WM. S. PARHAM,
JOHN MILLIKENS.

Witnesses: A. PURSE and
A. M. YOUNG.

Done and signed before me on the 9th day of June, 1841.

THOMAS W. WALLS, *Not. Public.*

Bond endorsed.

127, James Pepper et al. vs. bond, R. G. & H. W. Dunlap. Filed June 10th, 1841.

E. CAVILEER, *Dep. Clk.*

Citation.

The State of Louisiana,
Ninth judicial district court, parish of Madison:

JAMES PEPPER and al.
vs. } No. 127.
RICHARD G. DUNLAP.

To Sarah H. Evans, George McCullough, and Louisa McCullough, now residents of Louisiana, and to James Pepper, residing in the said parish of Madison.

You are hereby summoned, cited, either to comply with the demand contained in the petition of the said Richard G. Dunlap, of which a copy accompanies this citation, or to deliver your answer to the said petition at the office of the clerk of said court, held in the town of Richmond, in said parish, within ten days after service hereof.

Witness the honorable B. G. Tenny, judge of said court. Signed, [L. S.] sealed, and delivered, this 6th day of March, 1841.

JOHN T. MASON,
Clerk of said court.

Sheriff's return.

Received on the 8th day of March, A. D. 1841, and served on the same day of the month and year, by handing a certified copy of this citation, and of the petition, to James Pepper, curator, in person, at Richmond, in the parish of Madison, La.

D. S PRICE, *Constable.*

Service $2 50.

Endorsed.

127, Madison district court, James Pepper et al. vs. R. G. Dunlap. Citation to James Pepper, esqr., curator, filed 9th March, 1841.

JOHN T. MASON, *Clerk.*

Writ of injunction.

State of Louisiana,
Parish of Madison, ninth district court:

JAMES PEPPER et al.
vs. } No. 127.
R. G. DUNLAP.

State of Louisiana and said court, to James Pepper and Thomas B. Scott, sheriff, residing in the parish and State aforesaid.

Whereas due proof has been made before the honorable the ninth district court for the parish of Madison, State aforesaid, by Hugh W. Dunlap, of said parish and State, that the sale of certain property advertised by the sheriff of the parish and State aforesaid to take place on the 8th day of March, 1841, in the above entitled suit, is illegal and unjust—now, therefore, you are commanded and enjoined to proceed no further with the sale of the property wherein James Pepper et al. are plaintiffs and R. G. Dunlap is defendant, numbered 127. Herein fail not, under penalty of the law.

Witness the honorable B. G. Tenny, judge of said court, this 6th [L. S.] day of March, 1841.

JOHN T. MASON,
Clerk of said court.

Sheriff's return.

Received on the 8th day of March, A. D. 1841, and served on the same day of the same month and year, by handing a certified copy of this writ of injunction to James Pepper, curator, at Richmond, in the parish of Madison, La.; also a copy of the petition and writ of injunction to G. W. Tarkington, deputy sheriff, at the domicile of T. B. Scott, sheriff, on the Brudhy bayou, in the parish of Madison, La.

DAVID S. PRICE, *Constable.*

Service $1 50.

Endorsed.

127, Madison district court; James Pepper et al. vs. R. G. Dunlap. Writ of injunction filed 9th March, 1841.

JOHN T. MASON, *Clerk.*

(Interrogatories)—Petition.

9th district court, parish of Madison,
State of Louisiana:

JAMES PEPPER et al.
vs.
R. G. & H. W. DUNLAP.

To the judge of the ninth judicial district for the State of Louisiana, holding court for the parish of Madison, in said district.

Hugh W. Dunlap respectfully shews unto your honor, that the testimony of Dr. John Wren, of Amite county, and Joseph H. Williams, of Hinds county, Mississippi, John A. Chetton, of Fauquier county, Virginia, the cashier of the Citizens' Bank of Louisiana, and the register of the land office at Opelousas, Louisiana, will be material and important for the defendants in the trial of the above cause. That said witnesses live out of the jurisdiction of this honorable court. The said Hugh W. Dunlap therefore prays that your honor will grant him a commission to take said witnesses' testimony, which, when taken, to be read as evidence in the above cause; and herewith annexes interrogatories propounded to said witnesses, to be by them answered under oath by said witnesses before some justice of the peace, notary public, judge of some court or of record.

H. W. DUNLAP.

Affidavit.

State of Louisiana, parish of Madison:

This day, personally appeared before me, John T. Mason, clerk of the district court aforesaid, H. W. Dunlap, and made oath, that the facts set forth in the foregoing petition are true.

H. W. DUNLAP.

Sworn and subscribed to before me, this 19th day of April, 1841.

JOHN T. MASON, *Clerk*.

Order.

Let a commission issue as prayed for, returnable to the next term of this court, 19th of April, 1841.

JOHN T. MASON, *Clerk*.

Endorsed.

I accept service of the within petition, interrogatories annexed. James Pepper, 127, district court, James Pepper et al. vs. R. G. Dunlap. Interrogatories filed 19th April, 1841.

JOHN T. MASON, *Clerk*.

Interrogatories.

Interrogatories filed by H. W. Dunlap, in the case of James Pepper and others, against R. G. and H. W. Dunlap.

Interrogatory 1st. To Joseph H. Williams, witness on the part of defendants: Was you living with James Pepper, Sarah H. Evans, and George McCullough and wife, in December, 1836, on the cotton farm on the Mississippi river, where Cicero Jefferson, (alias Joseph Pepper,) died?

Interrogatory 2d. By the same. Did you or not hear James Pepper represent to R. G. Dunlap, that there was five hundred acres of cleared on said farm?

Interrogatory 3d. By the same. How many acres of cleared land do you believe was in the land sold by James Pepper and others, to R. G. Dunlap?

Interrogatory 4th. Did you ever hear James Pepper say how many acres of cleared land he believed was in said tract of land? If so, state all you ever heard him say on that subject.

Interrogatory 5th. Did you or not hear James Pepper say, that he thought R. G. Dunlap the easiest man cheated he had ever seen; that he believed every representation that was made about the property? If so, state all you heard him say on that subject, and when.

Interrogatory 5th. Did you hear James Pepper, or either of the plaintiffs, or Jesse or Maxwell Pepper, in their presence, say anything about not having a good title to any portion of the land sold to R. G. Dunlap? If so, state all you ever heard him, or either of them, say on that subject.

Interrogatory 6th. Did you not hear James Pepper say, that he was getting a large payment down from R. G. Dunlap, in the sale of the land and negroes; that he expected said Dunlap would be enabled to pay a few thousand dollars more, and then he felt confident that he could so arrange, as to get back all the property they sold for the balance of the debt? If so, state all you heard on that subject, and when, and where you heard it.

Interrogatory 7th. By the same. Did, or did not, James Pepper and G. W. McCullough, request you to show the cane land, and represent all the balance of the same kind of land, when you and them were about showing the land R. G. Dunlap purchased of them? Tell all that was said to you about showing the land.

Interrogatory 1st. To John Wren, by the same. Was you present in April, 1837, when James Pepper and others, transferred a farm and negroes, in Madison parish, to R. G. Dunlap, before A. J. Lowry, esq?

Interrogatory 2d. By the same. Did you, or did you not, hear James Pepper say, in reply to a demand made by said R. G. Dunlap on him for the title papers to the land he was about to convey, that he could not produce the same, as they were in the Citizens' Bank at New Orleans?

Interrogatory 3d. By the same. Did you ever hear James Pepper say anything about there being a defect in the title to any portion of the land he and others sold to R. G. Dunlap? If so, state all you heard him say, when and where it was.

Interrogatory 4th. By the same. Did you or not hear R. G. Dunlap demand from James Pepper a transfer of all the bank stock the plaintiffs had in the Citizens Bank of Louisiana? If so, state what you heard.

Interrogatory 1st. To the register of the land office, at Opelousas, in the State of Louisiana. Has the donation claim of James James to 640 acres of land, lying in township 16, range 15 east, including the mouth of James bayou, and designated as section 22, in said township, been confirmed by the commissioner appointed to adjudicate such claims, or has Congress ever confirmed the same?

Interrogatory 2d. By the same. Has James James had any donation claim or claims, confirmed to him in the vicinity of Vicksburg, (or Walnut Hills?) If so, state what claim or claims has been confirmed, where they lie, and what quantity of land the claim or claims contain.

Interrogatory 3d. By the same. What proof did James James, or any other person, make before the commissioners for the purpose of showing he was entitled to a donation claim or claims, in township 15 and 16, range 15 east? You will set out a copy of the proofs in each case, as on file in your office.

Interrogatory 1st. To John A. Chelton, by the deft. Do you the plaintiffs and defendants in this cause? If so, state where you become acquainted with them.

Interrogatory 2d. By the same. Did you ever hear the plaintiffs, or either of them, say anything about a sale of a certain tract of land, lying in Madison parish, State of Louisiana, adjoining Tuscumbia? If so, state all you heard said.

Interrogatory 3d. By the same. Did you or not hear James Pepper say, that said deft., R. G. Dunlap, was the easiest man cheated he ever saw; that the said Dunlap believed every thing that was told him? If so, state all you heard said on that subject.

Interrogatory 4th. By the same. Did you or not hear James Pepper say, that he had falsely represented to said R. G. Dunlap, the quantity of cleared land? If so, state all you heard him say about it.

Interrogatory 5th. By the same. Did you or not hear James Pepper say, that he had received a large payment down for the property sold to R. G. Dunlap, and that he expected to get back all the property he had sold for less than the balance due? If so, state all you heard on that subject.

Interrogatory 1st. To the cashier of the Citizens' Bank of Louisiana, at New Orleans. What quantity of stock did Mrs. Sarah H. Evans, James Pepper, George McCullough and wife, Louisa, subscribe for, to the Citizens' Bank of Louisiana?

Interrogatory 2d. By the same. Did, or did not, James Pepper, for himself, and as agent for the others, withdraw their subscription for said bank stock? If so, state when and how he done the same.

Interrogatory 3d. By the same. What premium is the Citizens' Bank stock worth at this time; and what has it been worth for the last four years?

Subpœna.

The State of Louisiana, parish of Madison:

9th dt. ct., to the sheriff of the said parish greeting:

You are hereby commanded to summon John Montgomery, A. J. Lowry, and Lafayette Jones, to be and appear in the district court, held at the court house, in the town of Richmond, in the parish aforesaid, on the 3d Monday in May next, then and there to testify, and the truth to say, in a certain matter of controversy now pending in said court, between James Pepper et al., plaintiffs, and R. G. Dunlap, defendant, on the part of the defendant, and not thence depart until legally discharged; herein fail not.

Witness the honorable B. G. Tenny, judge of said court, this 24th day of April, A. D. 1841.

[SEAL.] JOHN T. MASON,
Clerk of said court.
By E. CAVILEER,
Deputy clerk.

Return.

Received on the 24th day of April, 1841; served on Jones on the 30th day of the same month, by handing to him a certified copy of this subpœna in person, at Richmond, La.; also by handing a copy of the same to John Montgomery in person, at Richmond, La.; and on A. J. Loury, on the 4th day of May, leaving a copy of the same with Mrs. Loury, living at the domicile of A. J. Loury.

G. W. TARKINGTON, *Deputy sheriff.*

Service 2.00, mileage 1.50.

Endorsed.

1.27, to the high sheriff, filed May 5th, 1841.

E. CAVILEER, *Deputy clerk.*

Commission.

State of Louisiana, parish of Madison:

To the probate judge, or any justice of the peace residing in the county of Hines, State of Mississippi, greeting:

Know ye, that reposing special and confidence in your prudence, knowledge, and fidelity, you are hereby nominated and appointed, and by these presents invested with full power and authority to cause to come before you Joseph H. Williams, a resident of Hinds county, Mississippi, and him diligently to examine, on his oath or affirmation, touching his knowledge in a certain matter of controversy, now pending in the district court of the State of Louisiana, in and for the parish of Madison aforesaid, wherein James Pepper et al. are plaintiffs, and Richard G. Dunlap is defendant; which said examination, so taken, is to be read in evidence on the trial of said cause, and which you will also send, closed under your hand and seal, directed to the clerk of the said court of the parish of Madison, with all due speed, together with this commission, on or before the third Monday in May next.

Witness the honorable B. G. Tenny, judge of said court, this 29th day of *of* April, 1841.

JOHN T. MASON, *Clerk.*
By E. CAVILEER, *Dept. Clerk.*

Answers to interrogatories.

State of Mississippi, Hines county:

In pursuance of the annexed commission, to me, William Hamilton, a justice of the peace for said county, directed, from the ninth district court, parish of Madison, State of Louisiana, I have caused and called

Joseph H. Williams, a witness on behalf of the defendants in a certain suit pending in said court, wherein James Pepper and others are plaintiffs, and H. W. & R. G. Dunlap, defendants, to come before me, this 15th day of May, in the year of our Lord eighteen hundred and forty-one, at my office, in the town of Clinton, county aforesaid, for the purpose of taking his deposition in writing, to be read as evidence in a certain suit in said court pending, wherein James Pepper and others are plaintiffs, and H. W. and R. G. Dunlap, defendants, in the presence of the counsel of the said Dunlap, neither of the defendants being present or represented by counsel, the said J. H. Williams, being of lawful age and duly sworn, deposeth and saith as follows:

By plaintiffs' counsel, question 1st. Was you living with James Pepper, Sarah H. Evans, and George McCullough and wife, in December, 1836, on the cotton farm on the Mississippi river, where Cicero Jefferson (alias Joseph Pepper) died?

Answer. I was.

Question 2d, by the same. Did you or not hear James Pepper represent to R. G. Dunlap that there was five hundred acres of cleared land on said farm?

Answer 2d. I did hear him say so.

Question 3d, by the same. How many acres of cleared land do you believe was on the land sold by James Pepper and others to R. G. Dunlap?

Answer to question 3d. I think there was not more than three hundred acres of cleared land on the plantation.

Question 4th, by the same. Did you ever hear James Pepper say how many acres of cleared land he believed was on said tract of land? If so, state all you ever heard him say on that subject.

Answer to question 4th. I heard him say that there was five hundred acres, or the rise.

Question 5th, by the same. Did you or not hear James Pepper say *the* thought R. G. Dunlap the easiest man cheated he had ever seen, that he believed every representation that was made about the property? If so, state all you heard him say on that subject, and when.

Answer to question 5. I do not recollect of hearing Pepper making any remarks on this subject.

Question 5th. Did you ever hear James Pepper, or either of the plaintiffs, or Jesse or Maxwell Pepper, in their presence, say any thing about not having a good title to any portion of the land sold to R. G. Dunlap? If so, state all you ever heard him, or either of them, say on that subject.

Answer to question 5th. I heard Jesse Pepper say, Aaron Lilly had not perfected his title to the land which Cicero Jefferson purchased from him, and that Lilly had no more right to the land than he had, and he would not pay him for it.

Question 6th, by the same. Did you not hear James Pepper say, that he was getting a large payment down from R. G. Dunlap, in the sale of the land and negroes; that he expected said Dunlap would be enabled to pay a few thousand dollars more, and then he felt confident that he could so manage, as to get back all the property they sold for the balance of the debt? If so, state all you heard on that subject, and when and where you heard it.

Answer to question 6th. I did hear him say so, in his own house, in the year of 1836.

Question by the same, 7th. Did or did not James Pepper and G. W. McCullough request you to show the cane land, and represent all the balance of the same kind of land, when you and them were about showing the land R. G. Dunlap purchased of them?

Answer to question 7th. They told me to go down to a certain bridge on James bayou, where the cane grew, and represent all the balance of the land as being cane-brake lands of the same kind, and show it to the best advantage.

JOSEPH H. WILLIAMS.

I, William Hamilton, an acting justice of the peace for the county aforesaid, certify, that the above deposition was taken by me, at the time and place stated in the caption, in the presence of the persons therein stated, after the first witness was duly sworn, and that all the answers given to the questions therein propounded, are in the handwriting of my clerk, who is wholly disinterested; and that I am not of kin or counsel to either of the parties; that the said deposition was read and corrected and signed by the said witness, and that the same has not been out my hands until enveloped and sealed by me.

Given under my hand and seal, the date above written.

WM. HAMILTON, [SEAL.]
Justice of the Peace.

Interrogatories filed by H. W. Dunlap in the case of James Pepper and others against R. G. and H. W. Dunlap.

Interrogatory 1st, to Joseph H. Williams, on the part of defendant. Was you living with James Pepper, Sarah H. Evans, and George McCullough and wife, in December, 1836, on the cotton farm on the Mississippi river, where Cicero Jefferson (alias Joseph Pepper) died?

Interrogatory 2d, by the same. Did you or not hear James Pepper represent to R. G. Dunlap that there was five hundred acres of cleared on said farm?

Interrogatory 3d, by the same. How many acres of cleared land do you believe was on the land sold by James Pepper and others to R. G. Dunlap?

Interrogatory 4th. Did you ever hear James Pepper say how many acres of cleared land he believed was on said tract of land? If so, state all you ever heard him say on that subject.

Interrogatory 5th. Did you or not hear James Pepper say, that he thought R. G. Dunlap the easiest man cheated he had ever seen, that he believed every representation that was made about the property? If so, state all you heard him say on that subject, and when.

Interrogatory 5th. Did you ever hear James Pepper, or either of the plaintiffs, or Jesse or Maxwell Pepper, in their presence, say any thing about not having a good title to any portion of the land sold to R. G. Dunlap? If so, state all you ever heard him, or either of them, say on that subject.

Interrogatory 6th. Did you not hear James Pepper say, that he was getting a large payment down from R. G. Dunlap in the sale of the land and negroes, and that he expected said Dunlap would be enable to pay a few thousand dollars more, and then he felt confident that he could so manage as to get back all the property they sold for the balance of the debt? If so, state all you heard on that subject, and when and where you heard it.

Interrogatory 7. By the same. Did or did not James Pepper and G. W. McCullough request you to show the cane land, and represent all the balance of the same kind of land, when you and them were about showing the land to R. G. Dunlap, purchased of them; tell all that was said to you about showing the land.

State of Louisiana,
parish of Madison, ninth district court:

I do hereby certify the foregoing to be a true copy of the original interrogatories on file in this office.

Witness my signature, and impress of the seal of said court, this 24th [SEAL.] day of April, 1843. JOHN T. MASON, *Clerk.*
By E. CAVILEER, *Dep. Clk.*

Endorsed. Filed 20th May, 1841.
JOHN T. MASON, *Clerk.*

Commission.

State of Louisiana, parish of Madison:

To O. P. Jackson, or another associate judge of the city court of the city of New Orleans, greeting:

Know ye, that reposing special trust and confidence in your prudence, knowledge, and fidelity, you are hereby nominated and appointed, and by these presents invested with full power and authority, to cause to come before you the Cashier of the Citizens' Bank of Louisiana, a resident of the city of New Orleans, and him diligently to examine, on his oath, or affirmation, touching his knowledge in a certain matter of controversy now pending in the district court of the State of Louisiana, in and for the parish of Madison aforesaid, wherein James Pepper et al. are plaintiffs, and Richard G. Dunlap is defendant, which said examination, so taken, is to be read in evidence on the trial of said cause, and which you will also send, closed under your hand and seal, to the clerk of said court of the parish of Madison, with all due speed, together with this commission, on or before the third Monday in May next.

Witness the honorable B. G. Tenny, judge of said court, this 29th [SEAL.] day of April, 1841. JOHN T. MASON, *Clerk.*
By E. CAVILEER, *Dep. Clk.*

Interrogatories.

Interrogatory 1st. To the Cashier of the Citizens' Bank of Louisiana, at New Orleans. What quantity of stock did Mrs. Sarah H. Evans, James Pepper, George McCullough, and wife, Louisa, subscribe for to the Citizens' Bank of Louisiana?

Interrogatory 2d. By the same. Did or did not James Pepper, for himself, and as agent for the others, withdraw their subscription for said bank stock? If so, state when and how he done the same.

Interrogatory 3d. By the same. What premium is the Citizens' Bank stock worth at this time, and what has it been worth for the last four years?

State of Louisiana,
parish of Madison, ninth district court:

I do hereby certify the foregoing to be a true copy of the original, on file in this office.

Witness my signature, and the seal of said court, the 29th day of [SEAL.] April, A. D. 1841.

JOHN T. MASON, *Clerk.*
By E. CAVILEER, *Dep. Clk.*

JAMES PEPPER et al.,
vs.
R. G. DUNLAP.

District court for the parish of Madison, Louisiana.

J. B. Perrault, a witness, being duly sworn to give full and true answer to the interrogatories propounded to him, deposeth and saith, as follows:

To the first interrogatory he saith, that, upon referring to the list of subscriptions taken in the parish of Concordia, he finds that Sarah H. Evans, [this name is not legible] Pepper, Jesse Pepper, Louisa Pepper, James Pepper, had five hundred shares, but he finds no subscriber of the name of McCullough; it is likely that one of the females mentioned above is the wife of this person, and that he has been named instead of the wife. The commissioners appointed to receive subscriptions in the parish of Concordia, opened their books on the 28th April, 1836, and closed them on the 28th July, of the same year, but did not require the subscribers to note the day on which they subscribed; hence, he can only say, that the above named parties subscribed some time between the above mentioned dates.

To the 2d interrogatory he saith, that their subscriptions were not withdrawn, but, the parties having failed to complete their titles within the prescribed time, their names were stricken off the list.

To the third interrogatory he saith, that a stock broker could state more correctly than he can the highest rate at which country stock has ever been sold. Deponent is not aware, or, rather, he does not recollect, that any has been sold higher than 15 per cent. This stock is at present worth 10 *a* 11, firm. J. B. PERRAULT.

State of Louisiana, city of New Orleans:

Be it known, that, by virtue of the annexed commission, I have caused to come before me, at my office, 60 Royal street, on Thursday, the 13th day of May, 1841, at 10 o'clock, A. M., J. B. Perrault, a witness in a certain cause now pending in the district court of the State of Louisiana, for the parish of Madison, wherein James Pepper et al. are plaintiffs, and Richard G. Dunlap is defendant, and the said witness was duly sworn to tell the truth, and the questions put to him in the said cause, and his said deposition was reduced to writing by me, and subscribed by him in my presence.

In witness whereof, I have hereunto subscribed my name, this 13th May, 1841.

O. P. JACKSON, *Judge*.

Endorsed, 127. Depositions filed 20th May, 1841.

JOHN T. MASON, *Clerk*.

On Tuesday morning, May 20th, 1841, the following entry was made on the minutes of said court:

JAMES PEPPER et al.,
vs. } 127.
R. G. DUNLAP.

In this case, the district judge recuse himself, having been employed or consulted as counsel, and assigns it for trial by the parish judge on Wednesday, the 26th inst., and that the clerk be ordered to give notice thereof to the parish judge.

Motion to dissolve injunction.

Ninth district court, parish of Madison:

JAMES PEPPER et al.
vs. } No. 127.
RICHARD G. DUNLAP.

The plaintiffs in the above entitled suit came into court *court*, anc move that the injunction obtained by Hugh W. Dunlap, in said suit be dissolved and set aside, with twenty per cent. damages, and interes at the rate of ten per cent. upon the amount enjoined, upon the following grounds:

1st. Because Hugh W. Dunlap, the plaintiff in said injunction, is not the defendant in said suit, and therefore not entitled to an injunction under articles 739 and 740 of the code of practice, as obtained in this case.

2d. Because, from the showing of the plaintiff in said injunction, he acquired the mortgaged premises since the order of seizure and sale wa granted, and therefore has no right to oppose the sale of the same.

3d. Because the conveyance from Richard G. Dunlap, the defendant in this suit, to Hugh W. Dunlap, is *void*, as regards the plaintiffs and mortgagees, as the act of mortgage from the said defendant to the said plaintiffs contains the clause of *non alienan*, and therefore the said Hugh W. Dunlap has no right to oppose the said sale.

JAMES PEPPER,
Att'y for plaintiffs.

On Friday morning, 21st of May, 1841, the following entry was made on the minutes of said court:

JAMES PEPPER et al.
vs. } 127.
R. G. DUNLAP.

Motion to dissolve injunction filed on Wednesday morning, May 26, 1841. The following entry was made on the minutes of said court:

JAMES PEPPER et al.
vs. } 127.
R. G. DUNLAP.

In this case the court this day rendered the following judgment: In this case, by reason of the law and the evidence being in favor of the plaintiffs, Sarah H. Evans, James Pepper, and George McCullough, and against Hugh W. Dunlap, plaintiff in injunction; and the motion to dissolve and set aside the same being sustained by the court, it is therefore ordered, adjudged, and decreed, that the injunction be dissolved and set aside, with ten per centum damages upon the sum of twenty-two thousand five hundred dollars, the amount due of the judgment, the execution of which was enjoined, and interest on the same, at the rate of ten per centum per annum, from the 8th day of March, 1841, till this 26th day of May, 1841; and that the said plaintiffs, Sarah H. Evans, James Pepper, and George McCullough, do recover the same, amounting in all to the sum of twenty-seven hundred and thirty-one dollars, from the said Hugh W. Dunlap, plaintiff in injunction, and the costs of this injunction to be taxed. Rendered on the 26th May, 1841, and signed in open court on this first day of June, 1841.

R. C. DOWNES, *Parish Judge*,
Acting as judge dist. court.

Notice of judgment.

State of Louisiana, ninth district court, parish of Madison:

JAMES PEPPER et al.
vs. } 127.
R. G. DUNLAP.

To Hugh W. Dunlap, residing in the parish of Madison aforesaid.

Take notice, that on the first day of June, A. D. 1841, in said court a final judgment was rendered against you in the above entitled suit, in favor of said plaintiffs, Sarah H. Evans, James Pepper, and George McCullough, by which the injunction by you obtained in said suit was dissolved and set aside, with ten per cent. damages on the sum of twenty-two thousand five hundred dollars, and interest at the rate of ten per centum per annum on the same amount from the 8th day of March,

A. D. 1841, to the 26 day of May, A. D. 1841, which, amounting in all to [illegible] sum of twenty-seven hundred and thirty-one dollars, you are condemned to pay to said plaintiffs, and the costs of the injunction to be taxed.

Witness the honorable Richard Chas. Downes, parish judge, acting as judge of said court, this 2d day of June, A. D. 1841.

JOHN T. MASON,
Cl'k of said court.

Sheriff's return.

Received on the 2d day of June, 1841, and served the same day, by handing a certified copy of this notice of judgment to H. W. Dunlap in person, at Richmond, parish of Madison, La., June 2d, A. D. 1841. Service 75 cts.

G. W. TARKINGTON,
Dep'y Sheriff.

Endorsed.

127, ninth district court, parish of Madison, James Pepper et al. vs. R. G. Dunlap. Notice of judgment filed June 3d, 1841.

E. CAVILEER, *Dept. Clk.*

(Affidavit of witness.)—Attendance.

State of Louisiana, parish of Madison, ninth district court:

Personally appeared Lafayette Jones, who, being duly sworn, says, he has travelled forty miles to and from said court; that he has attended seven days as a witness in the case of James Pepper et al. vs. R. G. Dunlap, that he was summoned on part of the defendant, and that he is entitled to eight dollars.

JOHN T. MASON,
Cl'k of the ninth district court.
By E. CAVILEER,
Dept. Clk.

Endorsed.

127, James Pepper et al. vs. R. G. Dunlap. Filed June 3d, 1841.

E. CAVILEER, *Dept. Clk.*

Affidavit of attendance.

State of Louisiana, parish of Madison, May term, 1841:

Personally appeared John Montgomery, who, being duly sworn, says, that he attended as a witness in the district court in the case of James Pepper and al. vs. R. G. Dunlap, No. 127, nine days, and that he is entitled to nine dollars, June 9th, 1841.

JOHN T. MASON, *Clk.*
By E. CAVILEER, *Dept. Clk.*

1047

Endorsed.

127, James Pepper et al. vs. R. G. Dunlap. Affidavit of attendance of John Montgomery, $9, filed June 9th, 1841.

E. CAVILEER, *Dept. Clk.*

Petition of appeal.

To the honorable the judge of the ninth district court sitting in and for the parish of Madison, State of Louisiana.

The petition of appeal of Hugh W. Dunlap, who resides in the parish of Madison, State of aforesaid, respectfully shews, that at the May term of this honorable court (1841) a certain final judgment of this honorable court, dissolving the injunction sued out by your petitioner, in the suit styled James Pepper et al. vs. Richard G. Dunlap, No. 127, on the docket of said court, was obtained by the defendants in said injunction, (to wit, James Pepper et al.) Petitioner shews that the amount claimed and enjoined exceeds the sum of three hundred dollars; and further shows, that the judgment of this honorable court, so dissolving the injunction suit of your petitioner in this case, is erroneous, and greatly to the injury and prejudice of your petitioner.

Petitioner therefore prays that a suspensive appeal be granted him in this case, returnable to the next term of the supreme court of the State of Louisiana, appointed to be holden at Alexandria, on the first Monday of October next, 1841; and further prays that the defendants in this injunction (appellees) be cited, according to law, and for general relief, &c.

RICHARDSON & STACY, *Attys.*

State of Louisiana, parish of Madison:

Parish Judge Office.

In this case, it appearing that the judge of the district court is recused, it is therefore ordered that the prayer of the petitioner be granted as prayed for.

Let a suspensive appeal be allowed and granted to petitioner, and to stay execution, returnable to the next term of the supreme court of this State, appointed to be holden at the town of Alexandria, on the first Monday of October next, 1841.

On petitioner giving bond et security, conditioned according to law, in the sum of forty thousand dollars, ($40,000,) and let the defendants (appellees) in this appeal be cited according to law.

Done and signed this 3d day of June, A. D. 1841.

R. C. DOWNES, *Parish judge,*
Acting as judge of the 9th district court.

I, James Pepper, for myself, and as attorney in fact for Sarah H. Evans & George McCullough, do hereby acknowledge to have been duly served with the petition of appeal; and I do also hereby waive citation of appeal, this 11th June, A. D. 1841.

JAMES PEPPER.

1048.

Endorsed.

127, James Pepper et al. vs. R. G. Dunlap. Petition of appeal. Filed June 7th, 1841. E. CAVILEER, *Dept. Clk.*

On Monday morning, May 2d, 1842, the following entry was made on the minutes of said court:

JAMES PEPPER et al.
vs. } 127.
R. G. DUNLAP.

On motion of James Pepper, esq., plaintiff and appellee, the opinion and decree of the supreme court in this case was ordered to be spread upon the minutes, and is in the words and figures following, to wit:

JAMES PEPPER et al.
vs.
R. G. & H. W. DUNLAP.

Appeal from the 9th judicial district, parish of Madison.

The plaintiff having taken out an order of seizure and sale, to enforce their mortgage and vendor's privileges upon certain lands and slaves sold by them to R. G. Dunlap, the latter prosecuted an appeal, which came before us at the last term, and the judgment of the district judge was affirmed. See XVI. La. R., 163. After the proceedings had recommenced in the district court, upon the mandate from this court, being sent down on the 16th February, 1841, Hugh W. Dunlap, who, it appears, had purchased the mortgaged property on the 18th of April, 1839, two days after the original order of seizure was issued, and one day after the appeal had been allowed from that order, presented his petition, and obtained an injunction to stay proceedings.

The judge, in granting the injunction, exempted him from the obligation of giving security. The grounds upon which he asked for this equitable interference of the court, after expressing his surprise and astonishment that the plaintiffs had obtained an order of seizure and sale, and had caused the property to be advertised for sale, of which he was the *bona fide* owner, were, 1st. That the petitioners are not the only heirs of the person from whom they claim title to the land, but that there is another heir who is about to bring suit against him for her interest. 2d. That the vendors have not complied with the agreement to make R. G. Dunlap a good title according to their contract, but that a part of the land belongs to the United States. 3d. That having no right to convey the section 22, an action of warranty against them has accrued to their vendee for the value of the land. 4th. That suit has been brought for one of the slaves; and further, that certain persons are about to bring suit for four hundred acres of the land. It is further alleged, that when the vendors were about to make the authentic conveyance, R. G. Dunlap called upon them to produce the title papers to the land that he might examine them, and was assured by James Pepper, who had made the contract for himself and the others, that the title papers were in the Citizens' Bank of Louisiana, in New Orleans, and that the title was good; whereas the title papers for section 22 never were filed in that bank, but were in the possession of said Pepper, and that he would not have signed the notes for that part of the price, if he had known the real situation of the titles.

It is also alleged that, by the laws of the contract, R. G. Dunlap was entitled to all the bank stock which the vendors was entitled to in the Citizens' Bank of Louisiana as subscribers; the vendors having represented that they would be entitled to fifty thousand dollars of stock; yet, that James Pepper, one of the vendors, with a view to defraud the said R. G. Dunlap, withdrew the subscription, or released the same to the bank, without the consent of the said Dunlap, and contrary to his interest. Such is the substance of the grounds for relief set forth in the petition for injunction, upon which that writ was ordered to issue without security. The plaintiffs, whose proceeding were stayed, moved the court to dissolve the injunction, with damages, for the following reasons: 1st. Because Hugh W. Dunlap, the petitioner, is not the defendant in said proceedings, and therefore not entitled to an injunction without giving security. 2d. Because, from the showing of the plaintiff himself, he acquired the property mortgaged since the order of seizure and sale issued, and therefore has no right to oppose the sale. 3d. Because the sale to R. G. Dunlap contains the clause *de non alienando*, and consequently this conveyance *this conveyance* to the present petitioner is void, so far as the respondents are concerned, and he has no right to oppose the sale. The court dissolved the injunction upon this motion, and awarded damages against the plaintiff at ten per cent. on twenty-two thousand five hundred dollars, and interest on the same from the 8th of March, 1841, till the 26th May, 1841. In dissolving the injunction upon some of the grounds set forth in the motion, we are of opinion the court did not err. The articles 738, 739, and 740, give to the *debtor alone* the right of enjoining proceedings under executory process without giving security. It is clear, that the present plaintiff is not the debtor of the vendors of the mortgaged property. He acquired the property not only *pendente lite*, but with the fact *de non alienando* in the original conveyance, that clause would deprive him even of the advantage of being treated as a third possessor; and by no means should it be considered as giving him the privilege of making opposition, and arresting the proceedings of the hypothecary creditor without giving bond. But even supposing that the defendant were entitled to all the privileges and advantages of the original purchaser, it appears to us that even then he would be bound to give security in a case like the present.

The article of the code above referred to set forth the reasons for which proceeding may be arrested on opposition, without giving security; they are all such as go to the discharge of the debtor by reason of payment, release, prescription, or the like, since the date of the contract, or to the nullity of the contract itself for want of a free consent, as that it had been obtained by fraud, violence, fear, or other unlawful means. Although there is a suggestion of fraud in the petition, as to that part of the contract which relates to the bank stock, yet the party does not claim that the whole contract should be annulled on that or any other account. Although we agree with the court below that the injunction ought to be dissolved, yet we think a greater amount of damages was awarded than the statute justifies. The damages should have estimated at the time the injunction was obtained, and not upon the note which fell due afterwards. In this, therefore, the judgment must be *refirmed*. There was due at that time a sum of $15,363, instead of $22,500, upon which the interest and damages were estimated.

It is therefore adjudged and decreed, that the judgment of the district court be reversed; and proceeding to render such judgment as should, in our opinion, have been given below; it is further ordered and adjudged that the injunction be dissolved, and that the defendants recover of the plaintiffs in injunction interest at the rate of five per cent. upon the sum of fifteen thousand three hundred and sixty-three dollars, from the 8th of March, 1841, until the 24th of October, 1841, and five per cent. damages on said amount. The costs in the district court to be paid by the plaintiff and appellant; those of the appeal to be paid by the defendants and appellees.

I certify the foregoing to be a true copy of the judgment rendered in the above entitled case, taken from the records of my office.

Given under my hand and seal of office, as deputy clerk of the supreme court for the western district of the State of Louisiana, at Alexandria, on this 29th day of October, A. D. 1841.

[SEAL.]

A. L. BRINGHURST, *Dep. Clk.*

Judgment endorsed.

127. James Pepper et al. vs. Judgment R. G. & H. W. Dunlap. Filed November 29th, 1841. Clk. costs supreme court, $15, paid by G. W. Dunlap.

E. CAVILEER, *Dep. Clk.*

On Tuesday morning, May 3d, 1842, the following entry was made on the minutes of said court:

JAMES PEPPER et al.,
vs.
R. G. DUNLAP.
} 127.

Leave granted to file four notes in this suit, and to withdraw the same upon leaving certified copies with the clerk.

Judge's Order.

John T. Mason, esqr., clerk of the district court in and for the parish of Madison, will deliver to H. W. Dunlap, or his application, exhibits filed by him in suit No. 127, on your docket, to wit: a deed from James Pepper et others to R. G. Dunlap, and an agreement between the said parties, and also a deed (or copy) from R. G. Dunlap to H. W. Dunlap, and take a receipt for the same.

Given under my hand this 16th July, 1842.

THOMAS CURRY,
Dist. judge, 9th judicial district.

Endorsed: 127. Judge's order. Filed July 25th, 1842.

J. W. COUCH, *Dep. Clk.*

Receipt.

Received of John T. Mason, clerk of the district court for the parish of Madison, in the State of Louisiana, from his deputy, John W. Couch, a copy of a deed from James Pepper et al. to R. G. Dunlap; also an article of agreement between said parties, and a copy of a deed from R. G. Dunlap to H. W. Dunlap; all which papers were heretofore filed as exhibits by said H. W. Dunlap, in suit No. 127, this 25th day of July, A. D. 1842.
H. W. DUNLAP.

Receipt endorsed.

127.—James Pepper et al. vs. H. W. Dunlap. Receipt of H. W. Dunlap for papers, filed July 25th, 1842.
J. W. COUCH, *Dept. Clerk.*

Petition and order of injunction.

To the hon'ble Thomas Curry, judge of the ninth judicial district for the State of Louisiana, holding sessions of the district court in and for the parish of Madison, in said State:

The petition of Hugh W. Dunlap, a citizen of the State of Louisiana, and parish of Madison, respectfully sheweth unto your honor, that Richard G. Dunlap departed this life on the 22d day of June, 1841, intestate; that your petitioner has been regularly appointed curator of the succession of said Richard G. Dunlap, deceased, by the probate judge for the parish of Madison, aforesaid; that he has been duly qualified and authorized to discharge all the duties of said curatorship.

Your petitioner further sheweth unto your honor that said Richard G. Dunlap, in his lifetime, being desirous of purchasing a river farm, or cotton plantation, on the Mississippi river, did, on the day of December, 1836, make a purchase of two thousand two hundred and eighty acres of land, eighteen negroes, and the stock of horses, cattle, farming utensils, bank stock, &c., in the parish of Madison, and State aforesaid, then being in the parish of Concordia, from Mrs. Sarah H. Evans, James Pepper, George McCullough, and his wife, Louisa McCullough, for the consideration of one hundred and thirty thousand dollars; all of which will more fully appear by reference to a copy of said agreement then entered into, marked exhibit A, and prayed to be taken as part of this petition.

Your petitioner further sheweth that, by the term of the original agreement, exhibit A, the said vendors were to produce to said R. G. Dunlap a regular chain of title to all of said property sold, showing a regular title in themselves paramount to all others, and to convey to said R. G. Dunlap a good title to all of said property, with general warranty, on the said R. G. Dunlap complying with said contract on his part, which your petitioner avers he did, as will more fully appear by reference to the authentic act of conveyance from said vendors to said R. G. Dunlap, a copy of which is here marked exhibit B, and prayed to be taken as part of this petition.

Your petitioner further sheweth that, at the time said conveyance for said property was made and executed, and before the execution of the same, that said R. G. Dunlap demanded of said vendors a production of the title papers to said property, in pursuance of said agreement, marked exhibit A; that James Pepper, in presence of the other vendors, and the notary public, said he could not produce the same as they were filed in the Citizen's Bank of Louisiana at New Orleans, but that the titles were all perfect; the said R. G. Dunlap, confidently relying on the statements of said James Pepper, and believing that the title to the whole of said property, as designated and set forth in exhibit A and B, were good and perfect, he accepted said deed with general warranty, which he would not have done had it not have been for the said representations of said vendors.

Your petitioner further sheweth that the said vendors had no legal or equitable title to six hundred and forty acres of said land, being described as section No. twenty-two, in township 16, of range 14 east, of the land in the land office north of Red river, fronting on the Mississippi river, the same being vacant or public land belonging to the United States Government. Your petitioner positively charges that said vendors knew at the time they sold and conveyed said tract of land to said R. G. Dunlap, that they had not a good title to the same, but that the right was then in the United States Government.

Your petitioner further states, that the right to said section No. 22 is now in the United States Government.

Your petitioner further sheweth, that said section 22 was represented as a donation claim to James James; your petitioner sheweth, that James James had another tract of land donated to him by the United States Government as a donation claim to settlers that settled on land in the State of Louisiana prior to 1st December, 1803; and that said donation has been confirmed to James James, and his heirs have sold the same, and the purchaser is now living on said land, in the parish of Madison, a few miles below where said section 22 is located on the Mississippi river; all of which said vendors well knew before they sold said section No. 22.

Your petitioner charges that said vendors of R. G. Dunlap did wilfully, falsely, fraudulently, and with an intent to cheat and defraud the said R. G. Dunlap, represent and state to him that their title was good to said section 22, and all the balance of said property sold to him, when they well knew that it was not; that the same was defective as to part, as will hereafter appear; and that they had no right or title whatever to said section 22.

Your petitioner further sheweth, that said vendors wilfully, falsely, and fraudulently, represented themselves to said R. G. Dunlap as the only heirs of Cicero Jefferson, (alias Joseph Pepper,) Jesse D. and Maxwell B. Pepper, deceased, they claiming the *most* most of the property sold as the only heirs of said Cicero Jefferson, (alias Joseph Pepper,) Jesse D. and Maxwell B. Pepper, well knowing that they were not the only heirs of said decedents.

Your petitioner further sheweth, that Cicero Jefferson (alias Joseph Pepper) died on the 6th day of July, 1835, without issue, leaving his mother, Mrs. Sarah H. Evans, and his brothers and sister, Jesse D. and Maxwell B. Pepper, and Louisa Pepper, and his half sister, Mrs. Delony E. Evans, wife of Joseph M. Loony, his legal heirs; that said Cicero Jefferson (alias Joseph Pepper) died seized and possessed of the most of the land and negroes mentioned in exhibits A & B.

Your petitioner further sheweth, that Jesse D. and Maxwell B. Pepper died in the summer of 1836 without issue, leaving as their heirs their mother, Mrs. Sarah H. Evans, their brother, James Pepper, and sister, Louisa Pepper, and the child of their half sister, Mrs. Delony E. Evans, who died in August, 1835, leaving two children; that one of said children, a minor, died in February, 1836.

Your petitioner sheweth that, by reference to exhibits A and B, that the whole of said property, both land and negroes, was sold by the said vendors as their own property, when they well knew that Joseph M. Loony, and his son, William B. E. Loony, still a minor, were entitled to a portion of the same as heirs of said decedents, Joseph, Jesse D., and Maxwell B. Pepper.

Your petitioner further sheweth, that Joseph M. Loony, in his own right, and as natural tutor of his minor son, William B. E. Loony, has commenced a suit against your petitioner for a part of the property sold by said vendors to said R. G. Dunlap; which will more fully appear by reference to a copy of the petition in said suit, which is marked exhibit C, and prayed to be made a part of this petition.

Your petitioner avers that the property sued for is worth fifteen thousand dollars.

Your petitioner further sheweth, that, by the original agreement, marked exhibit A, the said vendors represented to said R. G. Dunlap that they were entitled to fifty thousand dollars worth of bank stock in the Citizen's Bank of Louisiana; and by the terms of said contract the said vendors were bound to transfer, or hold for the use and benefit of said R. G. Dunlap, said bank stock, as might best suit the interest of said Dunlap. Your petitioner states, that when said R. G. Dunlap complied with his part of said contract by making the first payment as agreed on, and executing his notes to said vendors, that he then demanded that said vendors should transfer said bank stock to him, or to some other person, for his use and benefit; but said vendors positively refused to convey or transfer the same to the said R. G. Dunlap, or to any person for his use.

Your petitioner further states, that he has been informed and believes, that after the said vendors entered into the contract marked H, and before the executory, the authentic act, conveyance for said farm and negroes, that James Pepper, for himself, and as agent for the other vendors, wrote to the cashier or attorney of the Citizens' Bank of Louisiana, withdrawing or releasing their subscription for stock in said bank, very much to the prejudice of the interest of said R. G. Dunlap.

Your petitioner avers that said R. G. Dunlap could have sold said bank stock for a premium of two thousand dollars, if said vendors had complied with their agreement, by securing and transferring said bank stock to the said R. G. Dunlap.

Your petitioner further sheweth, that at the special request of said vendors, the said R. G. Dunlap, on the 27th day of April, 1838, paid to the commercial firm of Reynolds, Marshall & Co., of Natchez, in the State of Mississippi, three thousand one hundred and five $\frac{87}{100}$ dollars, which was to be credited on a note of said R. G. Dunlap, for four thousand nine hundred dollars, then due said vendors. Your petitioner positively states, that said credit has not been entered on said note.

Your petitioner sheweth, that by a reference to a credit entered on said note, of nineteen hundred and forty-seven dollars, and the payment of said three thousand one hundred and five $\frac{87}{100}$ dollars to said commercial firm of Reynolds, Marshall & Co., which was to be credited on said note, that the same has been overpaid, and a credit ought to be entered on the note of said R. G. Dunlap, that fell due on the first of March, 1839, for the amount that overpaid said note, of $4,900.

Your petitioner further sheweth, that he paid said James Pepper near three hundred dollars for said R. G. Dunlap, which was to have been credited on the note of said R. G. Dunlap, but he has been unable to find any such credit.

Your petitioner further sheweth, that by the expressed terms of the mortgage, whenever said R. G. Dunlap paid the two first notes mentioned in said mortgage, that the mortgage *shall be released on the negroes;* and your petitioner avers, that both of said notes were paid before the said vendors obtained an order of seizure and sale.

Your petitioner further sheweth, that said section of land No. 22, fronting on the Mississippi river, is much more valuable than any part of the land mentioned in exhibit B; that the back concession to the same is valueless without section 22, as all access to the river is cut off, without passing through said section; and furthermore, that it would very much enhance the value of the two sections by having them connected.

Your petitioner believes, that said vendors have no right to said back concession, as they entered the same, as a back concession, under the provisions of the act of Congress that authorized the owners of front lands, on navigable streams, to enter the back lands; the vendors not being owners of the front section, No. 22, their entry for the back concession was void.

Your petitioner further sheweth, that he has expended a large sum of money in clearing land, and making valuable and necessary improvements, on section No. 22. Your petitioner avers, that said improvements are worth more than ten thousand dollars.

Your petitioner further sheweth, that said vendors, on the 16th day of April, 1839, obtained an order of seizure and sale on the notes of said R. G. Dunlap, mentioned in said mortgage, to sell the mortgaged property, consisting of twelve hundred and eight acres of land and ten negroes, being section 22, in township 16 of range 14 east, in the land office north of Red river, and the back concession to said section.

Your petitioner further sheweth, that said order of seizure and sale was granted in the lifetime of said R. G. Dunlap, and that the clerk of the district court for the parish of Madison numbered the same on his docket of cases, No. 127.

Your petitioner further sheweth, that since the death of said R. G.

Dunlap, the said vendors have caused the clerk of the district court for the parish of Madison aforesaid, to issue said order of seizure and sale, to wit, on the 7th day of June, 1842, and have placed the same in the hands of the sheriff of said parish, with instructions to proceed to sell the property ordered to be seized and sold by the order aforesaid, and that the sheriff has seized the same, and advertised it to be sold on the first Saturday of August next.

Your petitioner further sheweth, that said order of seizure and sale, issued without being revived against your petitioner, as curator of the succession of said R. G. Dunlap, or his heirs, or making him a party in any way.

Your petitioner further sheweth, that said vendors have not presented their claims against R. G. Dunlap to your petitioner, as his curator, that the same might be filed and placed on the tableau of distribution, as the law directs; nor has the same been presented to the probate judge, as your petitioner has been informed and believes. Your petitioner has been advised, and believes the law to be, that before said vendors could have proceeded to take out said order of seizure and sale, that they ought to have had the same made executory against your petitioner, as curator of said succession of R. G. Dunlap, or against the heirs of same, and that the notes should have been filed against said succession, that the same might have been settled contradictory with other creditors; and that, if the debt or claim should be allowed, and they have any preference, that the judge of probate should have ordered the same to have been paid as such.

Your petitioner insists, that it is illegal, unjust, and iniquitous that said vendors should be permitted to collect the money on said notes of R. G. Dunlap, as set forth in exhibit B, or to proceed to sell the property that has been seized and advertised for sale by the sheriff, as before set forth, by virtue of said writ of seizure and sale issued by the clerk of the district court, and for the parish of Madison aforesaid, for the following reasons, to wit:

1st. That the notes on which the order of seizure and sale has been granted were obtained by fraud, and through error occasioned by the false suggestions and representations of the said vendors.

2d. That said vendors sold said R. G. Dunlap six hundred and forty acres of land, at fifty dollars per acre, that they had no right to, knowing it at the same time, the right then and still being in the United States Government.

3d. That the said vendors are justly indebted to the succession of R. G. Dunlap the value of said 640 acres of land, and the value of the premium on fifty thousand dollars' worth of Citizens' Bank stock, worth ten thousand dollars.

4th. That said vendors sold said property, mentioned in exhibit B, to said R. G. Dunlap, as the only heirs of Cicero Jefferson (alias Joseph Pepper,) Jesse D. and Maxwell B. Pepper, well knowing that they were not the only heirs of said decedent.

5th. That a suit has been brought in the district court in and for the parish of Madison, for two hundred and fifty acres of said land and three of said negroes, by Joseph M. Loony, in his own right, and as natural tutor of his son, William B. E. Loony.

6th. That the vendors failed to give the credits the said R. G. Dunlap was entitled to, on the notes that *is* set out in their petition for said order of seizure and sale.

7th. That the order of seizure and sale illegally issued, without having been made executory against the curator or heirs of said R. G. Dunlap, deceased.

8th. That the order of seizure and sale illegally issued on said claims or debt, against the succession of said R. G. Dunlap, before the same had been settled contradictorily with other creditors, and ordered to be paid by the probate judge.

9th. That the mortgage on the negroes had been satisfied by the payment of the two first notes mentioned in said mortgage before the said order of seizure and sale was granted.

10th. That the mortgage on section No. 22, as set forth in exhibit B, is void, the right to the same being in the United States Government.

11th. That the mortgage on the back concession of section 22 is void, the said vendors not being the owners of section 22; that fronting on the Mississippi river, had no right to enter the back concession; therefore, said entry is void.

12th. That said vendors have no right to collect any portion of the money on said notes of R. G. Dunlap until they comply with their part of said original agreement by producing a regular chain of title to all of said property, showing a title in themselves paramount to all others.

The premises being considered, your petitioner prays that your honor will grant him an injunction, enjoining the said sheriff, Thomas B. Scott, and the said vendors, and their agent or attorney, from selling the aforesaid property that has been seized and advertised for sale by virtue of said order of seizure and sale, and to enjoin all further proceedings in said suit No. 127 until after the final hearing of said suits, and then that a perpetual injunction be ordered, adjudged, and decreed in said suit in favour of your petitioner, as curator of said R. G. Dunlap; and that said vendors, Mrs. Sarah H. Evans, James Pepper, George McCullough, and his wife, Louisa McCullough, be duly cited to answer this petition; and the said Mrs. Sarah Evans, George W. McCullough, and wife, Louisa, not being citizens of this State, but citizens of the State of Missouri, your petitioner prays that a curator *ad hoc* be appointed to represent said absentees; and that, after due proceedings be had in said cause, that your honor will order, adjudge, and decree, that said contract be rescinded as to section No. 22, and the back concession to the same; that the notes of said R. G. Dunlap be cancelled, and delivered up to your petitioner; that said vendors be decreed to pay to your petitioner, as curator of said R. G. Dunlap, fifty dollars per acre for said section No. 22, and the back concession to the same; that they be decreed to pay the value of whatever property said Joseph M. Loony may recover in his said suit; that the said vendors be decreed to give the credits for the money paid to Reynolds, Marshall &

Co., and by your petitioner to James Pepper; that the court decree that the mortgage on the negroes has been satisfied; that the order of seizure and sale to sell said negroes be set aside; that the mortgage on the land is void, because the same belongs to the United States Government; that the order of seizure and sale improperly issued, without having been made executory against the curator or heirs of said R. G. Dunlap, or the claims having been settled contradictorily with other creditors; that the said vendors be decreed to pay for the improvements made on said land; that said vendors be decreed to pay all the costs of this petition, and all the costs of said suit No. 127. Your petitioner also prays that said Mrs. Sarah H. Evans, James Pepper, George W. McCullough, and wife, Louisa, be compelled to answer the annexed interrogatories upon oath.

Your petitioner prays, that if he has mistaken his remedy in the premises, that your honorable court will grant to him such other and further relief as he is entitled to in the premises in equity and good conscience, and he prays for general relief in the premises, &c.

H. W. DUNLAP, *Att'y for petitioner.*

Interrogatories to Mrs. Sarah H. Evans, James Pepper, George W. McCullough, and his wife, Louisa McCullough:

1st. Did not James Pepper, for himself, and as agent for the other vendors, represent unto said R. G. Dunlap, when he entered into the agreement exhibit A, that said vendors had subscribed for fifty thousand dollars' worth of bank stock in the Citizens' Bank of Louisiana; and whether that was not the bank stock that you bound yourselves to convey to said R. G. Dunlap?

2d. Whether you, or some one of you, did not write to the cashier or attorney of the said bank, after entering into said contract marked exhibit A, in the foregoing petition? If so, state the substance of your letter, your object in writing, and the date of said letter.

3d. Whether you ever used any exertion to secure said bank stock after you entered into said agreement with said R. G. Dunlap?

4th. Whether you did not intentionally neglect to secure said bank stock?

5th. Whether Mrs. Delony E. Evans, the wife of Joseph M. Loony, was not the half sister of Joseph, Jesse D., and Maxwell B. Pepper, deceased?

6th. Whether William B. E. Loony is not the son of said Mrs. Delony E. Evans; and whether he is not the only child of said Mrs. D. E. Evans?

7th. Whether Mrs. Delony E. Evans is not dead, and when she died?

H. W. DUNLAP, *Att'y for petitioner.*

State of Louisiana, parish of Concordia:

This day Hugh W. Dunlap, the foregoing petitioner, being duly sworn, saith, that allegations set forth in his foregoing petition, as of his own knowledge, are true, and those upon the information of others he believes to be true; that it is true that Mrs. Sarah H. Evans, James Pepper, and George W. McCullough, and his wife, Louisa, had no legal right to section 22, in township 16, of range 14 east, as set forth in the foregoing petition, when they sold the same to said R. G. Dunlap, nor have they the right to the same at this time; that the right to the same was then, and now is, in the United States Government, as this affiant verily believes; that it is true that a suit has been brought against this affiant by Joseph M. Loony, as set forth in his petition; that it is true that said R. G. Dunlap did pay to Reynolds, Marshall & Co., the sum of three thousand one hundred and five dollars and eighty-seven cents, for which he was entitled to a credit, as set forth in the foregoing petition.

Signed, H. W. DUNLAP.

Sworn to and subscribed before me this 16th day of July, 1842.

THOMAS CURRY,
District judge, ninth judicial district.

Order.

Let an injunction issue as prayed for in the foregoing petition, and let the sheriff, and the other parties made defendants in said petition, be enjoined from proceeding on the order of seizure and sale, or the sale itself, as set forth in this petition, until the matter set up in this injunction are fully heard and finally determined in due course of law. And it is further ordered, that the plaintiff herein give bond, with one good and solvent surety, in the sum of five thousand dollars, to cover such costs and damages as the defendants in this injunction may sustain in [illegible] it is wrongfully sued out; said bond to be conditioned according to [illegible]

Done and signed this 16th day of July, 1842.

THOS. CURRY,
District judge, ninth judicial district.

It is further ordered, in the foregoing case, that James Pepper, esq., be appointed curator *ad hoc* to represent the absentees named in the foregoing petition.

Done and signed this 16th day of July, 1842.

THOMAS CURRY,
District judge, ninth judicial district.

J. M. Loony's petition.

To the honorable the judge of the ninth judicial district of the State of Louisiana, holding sessions of the district court in and for the parish of Madison:

The petition of Joseph M. Loony, a citizen of the parish of *Claibore*, in the State of Louisiana, respectfully sheweth, that your petitioner married Delony E. Evans, who was the half sister of Cicero Jefferson, (alias Joseph Pepper,) Jesse B. Pepper, and Maxwell D. Pepper.

Your petitioner further sheweth, that his Delony E. Evans, died in the month of August, 1835, leaving two children—a son, named William B. E. Loony, and a daughter, named Sarah Louisa Loony, who were the lawful children of your petitioner. Your petitioner further sheweth, that his daughter, Sarah Louisa, died in the month of February, 1836, being a minor, leaving her brother, William B. E. Loony, and your petitioner, as her only heirs.

Your petitioner further sheweth, that Cicero Jefferson, (alias Joseph Pepper,) died in the month of July, 1835, seized and possessed of the following property, lying and being in the parish of Madison aforesaid, on the Mississippi river, to wit: Section 22, and lots 23, 24, and 25, in township 16, of range 14 east, in the land district north of Red river; containing, by estimation, about 1,120 acres; and 19 negroes, slaves for life, to wit: Old Jacob, Isham, Clem, Nelson, Jacob, Jim, Bob, Henry, Manuel, Henny, Louisa, Rachel, Caroline, Pegg, Libby, Ailsey, Solomon, Anthony, and Milly. Also a stock of horses, cattle, farming utensils, &c. Your petitioner further sheweth, that said Cicero Jefferson, (alias Joseph Pepper,) died without issue, leaving his mother, Sarah H. Evans, his brother, Jesse B., Maxwell D., and James Pepper, his sister, Louisa Pepper, and his half-sister, Delony E. Evans, the wife of your petitioner, his heirs at law. Your petitioner further sheweth, that Jesse B. and Maxwell D. Pepper died in the summer of 1836, without issue, leaving their mother, Sarah H. Evans, their brother, James Pepper, their sister, Louisa Pepper, and the son of your petitioner, William B. E. Loony, who is the son of their half-sister, their heirs at law.

Your petitioner further sheweth, that said Jesse B. and Maxwell D. Pepper died seized and possessed of their interest in their brother's estate, or property, before set forth; and a joint interest with Sarah H. Evans, James Pepper, and Louisa Pepper, in the following described tracts of land, adjoining the land before described, to wit: Lot 3, of section No. 54, and the whole of section No. 53; also the back concession of section 22; all in township 16, range 14 east, in the land district north of Red river.

Your petitioner further sheweth unto your honor, that one Hugh W. Dunlap, a citizen of the parish of Madison aforesaid, now lives on said land, and has possession of all of said property, as before set forth, belonging to the succession of Cicero Jefferson, (alias Joseph Pepper,) Jesse B. and Maxwell D. Pepper, claiming the same of his own right, and refuses to give to your petitioner any part of said property, as the natural tutor of his son, William B. E. Loony, and as one of the heirs of his deceased daughter, Sarah Louisa Loony, who are legally entitled to part of said property as heirs of said Cicero Jefferson, (alias Joseph Pepper,) Jesse B. and Maxwell D. Pepper, deceased. Your petitioner states that he has been legally qualified as natural tutor of his son, William B. E. Loony, in the parish of Claiborne, where he resides. He is, therefore, authorized to ask, demand, and sue for any property his son is legally entitled to. The premises considered, your petitioner prays that the petition may be duly served upon said H. W. Dunlap, and that he be duly cited to answer the same; and that the honorable court will order, adjudge, and decree, that your petitioner recover of said H. W. Dunlap two hundred and fifty acres of said several tracts of land before described, and three of said negroes, or three thousand dollars in money, as the value of said negroes; also an equal portion of the stock of horses, cattle, &c., as before mentioned; the same being the amount or quantity of the property belonging to the succession of said Cicero Jefferson, (alias Joseph Pepper,) Jesse B. and Maxwell D. Pepper, that your petitioner is entitled to in his own right, and in right of his son, William B. E. Loony, being his natural tutor; and that said H. W. Dunlap be decreed to deliver over the possession of said property to your petitioner; also, that said H. W. Dunlap be decreed to pay hire for the use of said negroes, and rent for the land. Your petitioner also prays that a partition may be ordered to be made in said property, and that that part that shall be decreed to belong to your petitioner, in his own right, and in right of his son, as his natural tutor, as set forth in his petition, may be set apart together, but separate from balance of said property. Petitioner prays that said H. W. Dunlap be decreed to pay the costs of this suit, and for general relief.

C. B. McKURNAN,
Attorney for petitioner.

State of Louisiana, parish of Madison, ninth district court:

I do hereby certify the foregoing to be a true copy of the original petition on file in this office.

Witness my signature, and impress of the seal of said court, [SEAL.] this 9th day of June, 1842.

J. W. COUCH,
Deputy clerk of said court.

Endorsed.

526. 9th judicial district, parish of Madison. Joseph W. Loony vs. H. W. Dunlap. Copy exhibit C. filed June 7th, 1842.

J. W. COUCH, *Dep. Cl'k.*

(Good for costs, C. B. McKurman.)

Petition of injunction endorsed.

I accept service of the within petition, and waive service of the citation and the delays attending the same. August 5th, 1842.

THOS. B. SCOTT, *Sh'ff.*

127. H. W. Dunlap, curator of R. G. Dunlap, vs. James Pepper et al. Filed August 3d, 1842.

J. W COUCH, *Dep. Cl'k.*

Bond.

Know all men by these presents, that we, Hugh W. Dunlap, curator of the succession of Richard G. Dunlap, deceased, a resident of the parish of Madison, State of Louisiana, as principal, and John Milliken, of the same parish and State, as security, are firmly held and bound unto Sarah H. Evans and George McCullough, of the county of Lincoln, State of Missouri, and James Pepper, of the parish of Madison aforesaid, in the sum of five thousand dollars, good and lawful money of the United States, for the payment of which we hereby bind ourselves, our heirs, executors, and administrators. In testimony of which, we have hereunto set our hands, this the 2d day of August, A. D. 1842.

The condition of the above obligation is such, that whereas the said Hugh W. Dunlap, in his capacity of curator of the succession of Richard G. Dunlap, deceased, is about to obtain an injunction, prohibiting the said Sarah H. Evans, James Pepper, and George McCullough, and the sheriff of the parish of Madison, from proceeding with a writ of seizure and sale, issued in a certain suit, numbered 127 on the docket of the ninth judicial district court for the parish of Madison aforesaid, styled James Pepper et al. vs. R. G. Dunlap. Now, if the said Hugh W. Dunlap, curator as aforesaid, shall well and truly pay and satisfy all such damages as the said Sarah H. Evans, James Pepper, and George McCullough, may sustain in consequence of the wrongfully suing out of said injunction, then said obligation to be null and void, otherwise to be and remain in full force and virtue. Given under our hands the date above written.

H. W. DUNLAP,
Curator of the succession of R. G. Dunlap, dec'd.
JOHN MILLIKEN.

Witness: Wm. D. Winter.

Endorsed.

127. Bond filed August 3d, 1842.

J. W. COUCH, *Dep. Clerk.*

Writ of injunction.

State of Louisiana, parish of Madison, ninth district court:

Hugh W. Dunlap, curator of R. G. Dunlap,
vs.
James Pepper et al.
} No. 127.

State of Louisiana and said court, to James Pepper and Thomas B. Scott, sheriff, residing in the parish and State aforesaid:

Whereas, due proof has been made before the honorable the ninth district court for the parish of Madison, State aforesaid, by Hugh W. Dunlap, of said parish and State, that the sale of certain property advertised by the sheriff of the parish and State aforesaid, to take place on the 6th day of August inst., in suit styled James Pepper and al. vs. R. G. Dunlap, No. 127, is illegal and unjust. Now, therefore, you are commanded and enjoined to proceed no further with the sale of the property wherein James Pepper et al. are plaintiffs, and R. G. Dunlap is defendant, numbered 127. Herein fail not, under penalty of the law.

Witness the honorable Thomas Curry, judge of said court, this 3d day of August, 1842.

JOHN T. MASON,
Clerk of said court.
By J. W. COUCH,
Deputy clerk.

Return.

Received August the 6th, 1842, and served the same day of the month and year, by handing a certified copy of this writ of injunction to James Pepper, in person, in Richmond, in the parish of Madison, Louisiana. Service 75.

JAS. L. CRANDELL, *Constable.*

Endorsed.

127, H. W. Dunlap, curator of R. G. Dunlap, vs. James Pepper et al., writ of injunction to James Pepper, filed August 6th, 1842.

J. W. COUCH, *Dep. clerk.*

Citation.

The State of Louisiana, ninth
judicial court, parish of Madison:

H. W. DUNLAP, curator of R. G. Dunlap,
vs. } No. 127.
JAMES PEPPER and al.

To James Pepper, residing in said parish of Madison:

You are hereby summoned, cited, either to comply with the demand contained in the petition of the said H. W. Dunlap, curator of R. G. Dunlap, of which a copy accompanies this citation, or to deliver your answer to said petition at the office of the clerk of said court held in the town of Richmond, in said parish, within eleven days after service hereof.

Witness the honorable Thomas Curry, judge of said court. Signed, sealed, and delivered, this 3d day of August, 1842.

[L. S.]

JOHN T. MASON,
Clerk of said court.
By J. W. COUCH, *Dep. clerk.*

Return.

Received August the 6th, 1842, and served the same day of the month and year, by handing a certified copy of the petition for injunction, and of this citation, to the defendant, in person, in Richmond, in the parish of Madison, Louisiana.

Service $2 50. JAMES L. CRANDELL, *Constable.*

Endorsed.

127, District court, citation to James Pepper; filed August 6th, 1842.

J. W. COUCH, *Dep. clerk.*

Petition for commission.

To the honorable Thomas Curry, judge of the ninth judicial district for the State of Louisiana, holding sessions in and for the parish of Madison, in said district:

The petition of your petitioner, Hugh W. Dunlap, respectfully sheweth: That the testimony of Henry O. McHenry, a citizen of the parish of Ouachita, Louisiana, will be material for your petitioner on the trial of the suit now pending in the district court for the parish of Madison aforesaid, wherein your petitioner, as curator of R. G. Dunlap, deceased, is plaintiff, and James Pepper et al. are defendants. Your petitioner, therefore, prays that your honor will grant him an order to take the deposition of said Henry O. McHenry, before the parish judge of said parish, or some acting justice of the peace for said parish; the prayer being granted, your petitioner will ever pray.

H. W DUNLAP.

State of Louisiana, parish of Madison:

This day personally appeared Hugh W. Dunlap, the foregoing petitioner, before me, John W. Couch, deputy clerk of the district court for the parish aforesaid, who being duly sworn, saith, that the testimony of Henry O. McHenry, of the parish of Ouachita, will be material for him on the trial of the cause now pending in the district court for the parish aforesaid, wherein Hugh W. Dunlap, curator of R. G. Dunlap, is plaintiff, and James Pepper et al. are defendants.

H. W. DUNLAP.

Sworn and subscribed to before me, this 26th day of Sept'r, 1842.

J. W. COUCH, *Dep. clerk.*

Order.

Let a commission issue as prayed for in plaintiff's petition, according to law.

Richmond, parish of Madison, Louisiana, Sept. 26th, 1842.

J. W. COUCH, *Dep. clerk.*

Endorsed.

127, H. W. Dunlap, curator, &c., vs. James Pepper et al.; petition for commission; interrogatories filed September 26th, 1842.

J. W. COUCH, *Dep. clerk.*

Interrogatories.

HUGH W. DUNLAP, curator of R. G. Dunlap, dec'd,
vs. } 127.
JAMES PEPPER et al.

The plaintiff files the following interrogatories, to be answered by Henry O. McHenry, of Monroe, Louisiana; his answer to be used as evidence on the trial of the above cause.

Interrogatory 1st, by H. W. Dunlap. Are you not register of the land office at Ouachita?

Interrogatory 2d, by the same. Is or is not township 16, of range 14 east, of the lands north of Red river, in the district of which you are register?

Interrogatory 3d, by the same. Have all or any of the following described lands ever been entered, or are the same vacant and public land, to wit: section 22, in township 16, of range 14 east, of the land north of Red river; the back concession to the same; also section 53, and lot No. 3 of section 54, in same township and range?

Interrogatory 4th, by the same. Has any of the entries of the land mentioned in interrogatory 3d been set aside? If so, state when; also state the present situation of all of said land.

Interrogatory 5th, by the same. Have you received instructions relative to any of said land from the Commissioner of the General Land Office at Washington city? If so, state what, and set forth a copy of your instructions.

H. W. DUNLAP, *For plaintiff.*

Return.

Received on the 29th day of September, 1842, and served on the same day, by handing a certified copy of the within interrogatories to James Pepper, in person, at Richmond, Louisiana, September 30th, A. D. 1842. Service 75.

G. W. TARKINGTON, *Dep. sheriff.*

Endorsed.

127, H. W. Dunlap, curator, &c., vs. James Pepper et al.; interrogatories filed Sept. 26th, 1842.

J. W. COUCH, *Dep. clerk.*

On Wednesday, the 23d November, 1842, the following entry was made on the minutes of said court:

Exceptions filed.

HUGH W. DUNLAP, curator, &c.,
vs.
JAMES PEPPER et al.
} 127. Injunction.

Exceptions.

Ninth district court, parish of Madison:

HUGH W. DUNLAP, curator of the succession of R. G. Dunlap, deceased,
vs.
JAMES PEPPER et al.
} No. 127.

The defendants in the above entitled suit come into court, and plead the following exceptions to plaintiff's demand.

1st. Defendants aver that the plaintiff cannot maintain this suit, because the property by them sold to the said R. G. Dunlap, for the rescinding of which sale this suit is brought, does not belong to his succession, the said R. G. Dunlap having sold the same long before his death to the said Hugh W. Dunlap, together with all the rights of action of every kind and description whatsoever, (and which said property has again been sold by the sheriff of the parish of Madison as the property of said Hugh W. Dunlap, and purchased by Suzanna McKieman, wife of said Hugh, to whom it now belongs,) whereby the said R. G. Dunlap ratified and confirmed the sale made to him by these defendants of said property.

2d. Because the plaintiff never offered to return the property, the sale of which is attempted to be rescinded by this suit.

3d. Because the matters in the plaintiff' petition contained are *res judicata* between the parties hereto, the same having been decided in the supreme court of the State of Louisiana, in suit No. 127, the same in which these proceedings are filed.

4th. Because this honorable court cannot maintain jurisdiction of a suit to rescind a judgment of the supreme court of the State of Louisiana, as the same could only be brought in the court in which it was rendered; wherefore the defendants pray that this suit be dismissed at plaintiff's costs. And the defendants, Sarah H. Evans, George McCullough, and James Pepper, pray that the injunction obtained in suit No. 127, by which the judgment of the supreme court was enjoined, be dissolved and set aside, and that they recover damages against said H. W. Dunlap, curator, and John Milleken, his security, in solido, at the rate of twenty per cent. per annum, on the sum of twenty-seven thousand five hundred dollars, the amount of the judgment due, and additional interest on the same amount, at the rate of five per cent. per annum, from the time of the wrongfully issuing of said injunction.

JAMES PEPPER,
For himself, and attorney for the other defendants.

Endorsed.

127, H. W. Dunlap, curator, vs. James Pepper et al.; exception filed November 23, 1842.

J. W. COUCH, *Dep. clerk.*

On Saturday morning, 26th November, 1842, the following entry was made on the minutes of said court:

HUGH W. DUNLAP, curator, &c.
vs. } 127.
JAMES PEPPER et al.

Amended petition filed by leave of the court; this case was this day taken up to be tried on exceptions, and case submitted to the court.

Amended petition.

State of Louisiana, parish of Madison:

HUGH H. DUNLAP, curator of R. G. Dunlap, deceased,
vs. } No. 127.
JAMES PEPPER et al.

To the honorable Thomas Curry, judge of the 9th judicial district for the State of Louisiana, holding sessions in and for the parish of Madison in said district.

The amended petition of Hugh W. Dunlap, curator of R. G. Dunlap, deceased, sheweth unto your honor, that, since your petitioner obtained the order for an injunction in the above styled cause, he received a notice, that the Commissioner of the General Land Office had set aside the entries made by the defendants to sections 52 and 53, and for lot No. 3 of section 54, amounting to 1,149 acres, said land being in township 16, of range 14 east, north of Red river; the said entries were set aside on the ground that they had been illegally made.

Your petitioner further sheweth, that said land was part of the land sold by said defendants to R. G. Dunlap, as will appear by reference to exhibit B, in the petition filed by your petitioner in the above cause. Your petitioner further sheweth, that since the obtaining the injunction in this cause, that the Government of the United States has sold section twenty-two, in township 16, range 14 east, and that it is now ~~owne~~ *and that it is now owned* by the persons who purchased the same from the Government, so that the defendants cannot make a title to the same. The premises considered, your petitioner prays, that the said James Pepper, Sarah H. Evans, and George McCullough, and wife Louisa, be duly cited to answer this amended petition; and that said defendants be decreed to pay to your petitioner, as curator of R. G. Dunlap, deceased, fifty dollars per acre for said land, that being the sum said land was sold for to said R. G. Dunlap by said defendants, and that they pay the costs of this amended petition.

H. W. DUNLAP.

Endorsed.

127.—James Pepper et al. vs. R. G. and H. W. Dunlap. Amended petition filed 26th November, 1840.

JOHN T. MASON, *Cl'k.*

I accept service of the within amended petition this 16th day of December, A. D. 1842.

JAMES PEPPER.

John M. Moore to McHenry and Receiver.—Copy.

General Land Office, June 9th, 1842.

Gentlemen:—Your letter of the 1st December, 1841, was received in due time, in which you enclosed the application of Gibeon Gibson, to have refunded the purchase money paid by him per receipt No. 3,143, on an entry under the back pre-emption law of 15th June, 1832; and state that the lands so entered and claimed have subsequently been sold to other individuals, for receipts 1,727, 3,521, 4,681, and 7,276. The entry of Mr. Gibson appears to have been made in every respect according to law; and his request to have it set aside, and the purchase money refunded, cannot, consequently, be granted. On the 27th October last, the receiver was directed to refund the purchase money on one of these subsequent conflicting entries, No. 1,727, and you were instructed at the same time to return to this office the certificate 4,681 issued on another, in order it might be cancelled; you are now instructed to transmit also, for the same purpose, the certificate 3,521, which was returned to the register on the 6th July, 1837, on account of the confliction with this entry of Gibson. The certificate 7,276, is on file in this office, and will be cancelled.

You will please notify the proper claimants, that entries 3,521, 4,681, and 7,276, conflicting with the prior claim of Gibson, are considered illegal, and will not be sanctioned; and that you are prepared to refund the purchase money paid thereon, which the receiver is hereby authorized to do.

Very respecfully, your obed't serv't.

JNO. M. MOORE,
Acting Commissioner.

To the Register and Receiver of the land office at Ouachita, Louisiana.

Land office at Ouachita, Louisiana:

I, Henry O. McHenry, register of the land office at Ouachita, La., do hereby certify, that the foregoing letter is a true copy of the original on file in this office. In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said office this day of November, A. D. 1842.

[SEAL.] HENRY O. McHENRY, *Register*.

Endorsed.

127, filed Nov. 26th, 1842. J. W. COUCH, *Deputy clerk*.

Thomas H. Blake, commissioner, to Register and Receiver.—Copy.

General Land Office, Sept. 9th, 1842.

GENTLEMEN:—Your letter of the 18th ult., in reference to certain claims under the act of 4th of September last, preferred by claimants to portions of sections 22 and 52, of T. 16 N., of R. 14 E., has been received; the first mentioned section was erroneously surveyed, as the confirmation of James James, and the latter, as the back concession for the said confirmation. This error being discovered, the surveyor general was directed to subdivide those sections, so that they might be disposed of as public land; you will therefore permit the entries by those claimants, if by the proof filed they shall show themselves entitled to the benefit of said law. As this land was not returned to your office as *public land* until after the 22d day of June, 1842, claimants under the act of 1838 and 1840, (should there be any, which is more than probable,) were prevented from proving up and paying for their claims before that time, and may secure their land by making proof thereof, and payment for the same, at any time within a year after the receipt by you of the plat of these sections. This fact is mentioned, because claims under a law of a prior date will take precedence of those under a law of a subsequent date; and it may therefore be necessary for claimants under the law of 1841, to show that no other person was settled on the same land claimed by them, so as to have entitled such person to a pre-emption under a law prior to that of 1841, under which they claim.

Respectfully, your obed't servant,

THOMAS H. BLAKE, *Comr*.

To the Register and Receiver, Ouachita, La.

I, Henry O. McHenry, register of the land office at Ouachita, Louisiana, do hereby certify, that the foregoing letter is a true copy of the original on file in said land office. Given under my hand this [SEAL.]

Endorsed.

127, filed November 26th, 1842.

J. W. COUCH, *Dpy. clk.*

Commission.

HUGH W. DUNLAP, curator &c.
vs.
JAMES PEPPER et al.
No. 127.

State of Louisiana, parish of Madison, ninth district court.

To the parish judge of the parish of Ouachita, or any acting justice of the peace of Ouachita parish, greeting:

Know ye, that reposing special trust and confidence in your prudence, knowledge, and fidelity, you are hereby nominated and appointed, and by these presents invested, with full power and authority to cause to come before you Henry O. McHenry, of Monroe, and him diligently to examine on his oath or affirmation, touching his knowledge in a certain matter of controversy, now pending in the ninth district court of the State of Louisiana, in and for the parish of Madison aforesaid; wherein Hugh W. Dunlap, curator of R. G. Dunlap, plaintiff, and James Pepper et al. are defendants; which said examination so taken is to be read in evidence on the trial of said cause, and which you will also send closed under your hand and seal, directed to the clerk of said court, of the parish of Madison, with all due speed, together with this commission, on or before the third Monday of November next.

Witness the honorable Thomas Curry, judge of said court, this 17th day of Oct., A. D. 1842.

[SEAL.] JOHN T. MASON, *Clerk of said court.*
By J. W. COUCH, *Dept. clerk.*

Commission endorsed.

127. Filed Nov. 26th 1842.

J. W. COUCH, *Dept. clerk.*

Interrogatories.

HUGH W. DUNLAP, curator of R. G. Dunlap, deceased,
vs.
JAMES PEPPER et al.
127.

The plaintiff files the following interrogatories, to be answered by Henry O. McHenry, of Monroe, Louisiana; his answers to be used as evidence on the trial of the above cause:

Interrogatory 1st, by H. W. Dunlap. Are you not register of the land office at Ouachita?

Interrogatory 2d, by the same. Is or is not township 16, range 14 east, in the lands north of Red river, in the district of which you are register?

Interrogatory 3d, by the same. Have all or any of the following described lands ever been entered, or are the same vacant, and public lands; to wit, section 22, in township 16, of range 14 east, of the land north of Red river, the back concession to the same; also section 53, and lot No. 3, of section 54, in the same township and range.

Interrogatory 4th, by the same. Has any of the entries of the land mentioned in interrogatory 3d been set aside?! If so, state when; also state the present situation of all said land.

Interrogatory 5th, by the same. Have you received any instructions, relative to any of said land, from the Commissioner of the General Land Office at Washington city? If so, state what it set forth, a copy of your instructions.

H. W. DUNLAP, *for plaintiff*.

State of Louisiana, parish of Madison,
ninth district court:

I do hereby certify the foregoing interrogatories to be a true and correct copy of the originals on file in this office.

Witness my signature, and the impress of the seal of the ninth district court, this 17th of October, 1842.

[SEAL.] J. W. COUCH,
Dep. clerk of said court.

Endorsed.

[illegible]127. H. Dunlap, curator, &c., vs. James Pepper et al. Interrogatories, filed Sept. 26th, 1842.

J. W. COUCH, *Dy. clerk, copy.*

Interrogatories and answers.

Ninth district court, Madison parish,
State of Louisiana:

HUGH W. DUNLAP, curator of Richard G. Dunlap, deceased.
vs. } 127.
JAMES PEPPER et al.

Answers of Henry O. McHenry, to interrogatories propounded to him by the plaintiff in the above entitled suit, to wit:

Answer to 1st interrogatory. I am.

Answer to 2d interrogatory. It is in the district of lands north of Red river, of which I am the register.

Answer to 3d interrogatory. Yes. Section No. twenty-two, of township No. 16 north, of range No. 14 east, has been entered as follows, to wit: Lot No. 2, containing $161\frac{58}{100}$ acres, by John Bartlett, on the 21st October, 1842, as per certificate No. 7,686; lot No. 4, containing 153 acres, by Walter A. Grisham, on the 21st Oct., 1842, per certificate No. 7,687; lot No. 3, of said section, containing $160\frac{79}{100}$ acres, by

Charles B. McKierman, per register of certificates, No. 7,688, dated 21st Oct., 1842; and the lot No. one of said section 22, on the 18th of November, 1842, by Robert W. Burney, containing 167 $\frac{67}{100}$ acres, as per certificate No. 7,699. The back concession referred to is designated as section No. 52; was entered as such on the 28th May, 1836, in the names of "heirs of Cicero Jefferson," as per register of certificates, No. 3,426; section No. 53, and lot No. 3, of section No. 54, township 16, R. 14 east, was entered on the 15th July, 1836, in the names of Sarah H. Evans, Maxwell D. Pepper, Jesse B. Pepper, Louisa Pepper, and James Pepper, as per certificate of purchase No. 3,521.

Answer to 4th interrogatory. Yes. The entry of section No. 52, as per certificate No. 3,426, has been set aside and cancelled by the Commissioner of the General Land Office at Washington city, for the reason that it was illegal as a back concession to section 22, which latter section was erroneously claimed and surveyed as the confirmation of "James James."

The land office, of which I am the register, was officially notified, by letter dated 9th September, 1842, from the Commissioner of the General Land Office, that the surveyor general was directed to subdivide said sections 52 and 22, so that they may be disposed of as part of the public land. The present situation of said sections 52 and 22 is, that the latter has been entered under the provisions of the act of Congress entitled "an act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved Sept. 4th, 1841, and the first, (section 52,) is now vacant public land. The entry of section No. 53, and lot No. 3, of section 54, as per certificate No. 3,521, has also been set aside and cancelled by the Commissioner of the General Land Office, for the reason of its illegality, as it conflicted with a prior claim of Gibeon Gibson for a back pre-emption, as per receiver's receipt No. 3,143, and dated 11th April, 1836. The register and receiver were instructed, by letter from the Commissioner of the General Land Office, under date of 9th June, 1842, to notify the proper claimants of said entry No. 3,521 that the same was cancelled, and to make their application for the repayment of the money paid for said entry. And that the receiver was authorized to make such repayment whenever he was applied to for that purpose.

The present situation of the land, (sect. 53, and lot No. 3, of sec. 54,) embraced in the said illegal entry No. 3,521, is, that it is public land, subject only to the said back pre-emption claim of Gibeon Gibson; and to what extent must be ascertained by a survey, to be made under the direction of the surveyor general; and any surplus land left, after satisfying said claim of Gibson's, will be only subject to entry by virtue of a pre-emption right, unless it may be proclaimed for public sale by the President of the United States; and if there should be no pre-emption claim, it can be purchased at the public sale, &c.

Answer to 5th interrogatory. Yes. The register and receiver have *have* received instructions from the Commissioner of the General Land Office, in relation to said lands, by letters under date 6th July, 1837, 9th June, 1842, and 9th September, 1842; and certified copies of the same, by me, is herewith transmitted, and makes part of this answer.

HENRY O. McHENRY, *Register*.

Sworn to and subscribed before me, this 18th day of November, A. D. 1842.

LEMUEL NEWMAN,
Justice of the Peace.

Parish of Ouachita, State of Louisiana:

I, Lemuel Newman, a justice of the peace in and for said parish and State, do hereby certify, that in pursuance of the annexed commission, issued by the honorable the 9th district court, in and for the parish of Madison, Louisiana, I have caused Henry O. McHenry, a witness named in said commission, to appear before me, in the town of Monroe, parish of Ouachita, State aforesaid, and who, being duly sworn, according to law, to answer under oath the interrogatories propounded to him by the plaintiff in a suit now pending in said district court for the parish of Madison, La., wherein Hugh W. Dunlap, curator of R. G. Dunlap, deceased, is plaintiff, and James Pepper et al. defendants; the said witness, to wit, Henry O. McHenry, did so appear on the 18th day of November, A. D. 1842, and did, in writing, make the answers to the said interrogatories under oath as aforesaid, and that he signed the same, after being first duly sworn in my presence; which evidence, so taken, with the documents thereto relating, and the said commission, with the interrogatories annexed, I have closed, and send them, under seal, directed to the clerk of the court for said 9th judicial district, to be holden in and for the parish of Madison aforesaid.

In witness whereof I have hereunto subscribed my name and official *office*, in the town of Monroe, parish of Ouachita, State of Louisiana, this 18th day of November, A. D. 1842.

LEMUEL NEWMAN,
Justice of the Peace.

Endorsed.—To the clerk of the 9th district court for the parish of Madison. Richmond, La., No. 127. Hugh W. Dunlap, curator, &c., vs. James Pepper and al. Filed Nov. 26th, 1842.

J. W. COUCH, *D'y Clerk*.

Opened, December 1st, 1842.

J. W. COUCH, *D'y Clerk*.

Justice's fees $1, register's fees $25—$26; for searches, copies, and certificates, paid by plaintiff.

Copy.—*Letter from General Land Office*.

GENERAL LAND OFFICE, *6th July*, 1837.

SIR: Accompanying this list, you will receive the corresponding certificates for correction, the discrepancies being also noted in pencil on each certificate.

No. 3,434. Purchaser's name *Simon* Manning in receipt, instead of Solomon Manning, as in certificate—which of the two is correct?

3,435. Same as above.

3,444. N. E. $\frac{1}{4}$ of sec. 12, claimed as pre-emption under act of 1834, see cert. No. 2,941, and allowed; money must be refunded, this cert. is retained in this office at present.

3,451. Purchasers' name, Jno. Knight and Jonathan T. Wilson, in receipt.

3,461. E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ in receipt, E. $\frac{1}{2}$ and N. E. $\frac{1}{4}$ in certificate. Both wrong—S. W. $\frac{1}{4}$ previously sold, see certificate No. 3,172. Supposed to E. $\frac{1}{2}$ and N. W. $\frac{1}{4}$.

3,464. Contents disagree with plat. Private claim in sec. 34. "Maison Rouge" claim in sec. 35.

3,469. Should be 41 51 acres to agree with plat.

3,495. N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of sec. 8, sold to same person, cert. No. 2,701.

3,499. N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ included in suspended certificate No. 2,586, previously returned to Reg. for correction.

3,517. Selected for schools by act of 20th May, 1826, and approved by Sec'y of the Treasury—money must be refunded.

3,521. Section 54, covered nearly altogether by the back claim of Gibeon Gibson, see receipt No. 3,143. S. E. part of lot 3, of sec. 53, covered by same claim.

3,528. Should be 156.00 acres to correspond with plat.

3,530. Should be 870.40 acres to agree with plat in this office.—$100.40 to be refunded.

3,575. N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ in receipt.

3,587. Should be 294.64 acres to agree with plat in this office.

3,593. Should be 478.96 do do do.

3,628. 845.57 acres on plat.—$125 or more must be paid.

3,634. R. 1 *W.*, in receipt—cert. supposed to be correct.

3,667. 187.28 acres on plat in this office—refund balance.

3,686. Should be R. 2 *E.*, as in receipt.

3,701. Previously sold, see certificate No. 606. Money must be refunded.

3,703. Should be 1,920.92 acres to agree with plat. Additional money must be paid.

3,718. Claimed by "Maison Rouge." See letter from receiver, 15th November, 1830.

3,719. Should be 39.95 acres in plat.

3,730. Claimed by "Maison Rouge." See letter above referred to, not signed by register.

3,777. Should be range 2 *W.*, as in receipt.

3,789. Should be R. 2 *E.*, as in receipt.

3,790. Should be 39.42 acres to agree with plat.

No. 3,795. Should be 154.55 acres to agree with plat. W. ½ S. E. ¼ of sec. 18, previously sold. See cert. No. 1,508. Money must be refunded.
3,799. Should be 39.87 acres on the plat.
3,803. Patented. See cert. No. 1,630. Money must be refunded. This certificate retained in this office.
3,810. Should be 242.14 acres to agree with the plat.
3,816. Purchaser's name, *Wm. P. Robertson,* in receipt.
3,817. Do do do do.
3,829. Sec. 35, should be sec. 25, as in receipt.
3,837. Purchaser's name, *Wm. P. Robertson,* in receipt.
3,860. Should be 166.62 acres, as in plat.
3,880. N. ½ sec. 3, in receipt. Whole quantity should be 1,594.60 acres, to correspond with the plat in this office.
3,894. Money should be $812 20.
3,910. N. W. ¼ of N. W. ¼ in receipt, and N. E. ¼ of N. W. ¼ in register's return. N. E. ¼ of section previously sold.
3,926. Not signed by register.
3,948. Should be 639.06 acres, and $798 82.

It is desirable that you make the corrections on the certificates, and return them as soon as possible to this office.

Very respectfully, your obt. svt.,
JAS. WHITCOMB, *Commissioner.*

Register of the Land Office, Ouachita, La.

Land Office at Ouachita, Louisiana.

I, Henry O. McHenry, register of said land office, do hereby certify, that the preceding letter, signed "Jas. Whitcomb, Commissioner," is a true and correct copy of the original on file in this office.

[SEAL.] In testimony whereof, I have hereunto subscribed my name, and affixed the impress of the seal of said land office, this 18th day of November, 1842.

HENRY O. McHENRY, *Register.*

Endorsed.—127. Filed Nov. 26th, 1842.
J. W. COUCH, *D'y Clk.*

On Tuesday morning, Dec. 1st, 1842, the following entry was made on the minutes of said court:

HUGH W. DUNLAP, curator, &c.,
vs. } 127.
JAMES PEPPER et al.

Exception overruled, and, on motion of plaintiffs' counsel, it is ordered, that H. W. Dunlap file, in this case, certificates No. 3426, 3521, which were accordingly filed.

Judge Curry's decision.

Hugh W. Dunlap, curator of the estate of
R. G. Dunlap, dec'd,
vs.
Pepper et al.

On motion to dissolve injunction.

The defendants moved to dissolve the injunction on the following grounds:

1st. Because R. G. Dunlap, in his lifetime, sold the premises in question to H. W. Dunlap, together with all his rights of action of every kind and description whatever, (the sale of which, by the defendants, to R. G. Dunlap, is now sought to be rescinded;) that said property has again been sold, by the sheriff, as the property of H. W. Dunlap, and purchased by his wife, to whom it belongs; whereby R. G. Dunlap ratified and confirmed the sale made to him by these defendants.

2d. Because the plaintiff never offered to return the property, the sale of which is attempted to be rescinded by this suit.

3d. Because the matter in the plaintiff's petition are *res judicatae* between the parties hereto, the same having been decided in the supreme court, in suit No. 127, the same in which these proceedings are filed.

4th. This court cannot take jurisdiction of a suit to rescind a judgment of the supreme court; it could be brought in the court in which it was rendered.

The defendants then pray, that the injunction be dissolved, with damages.

The injunction rests on the following facts and grounds: the defendants, James Pepper and others, sold to R. G. Dunlap a plantation and slaves, with usual warranty of title; in 1839, the vendors took uot price an order of seizure and sale against the premises, for a part of the alleged to be due and unpaid.

On the 18th April, two days after granting the order of seizure, R. G. Dunlap sold the property to H. W. Dunlap, and one day after an appeal had been taken from the order of seizure. The appeal was tried simply on the order of seizure, and the case remanded; see 16 La. R., 163. On the return of the cause to the district court, H. W. Dunlap, the purchaser from R. G. Dunlap, set up various defects against the title to the land, and presented several grounds of defence against the vendors' demand for the price, embracing some of the grounds in the present injunction. The case was tried, and, from judgment rendered in the district court, H. W. Dunlap appealed. His appeal was dismissed in the supreme court, because the order of seizure and sale which he enjoined had issued against R. G. Dunlap, and that he alone could enjion or contest the proceedings under it. The matters of defence set up by H. W. Dunlap were consequently dismissed, without any trial on the merits. These matters had never been pleaded by R. G. Dunlap, but in the mean time R. G. Dunlap and his curator *has* taken the present proceedings and injunction against the order of seizure and sale of the original vendors.

The injunction rests on the following grounds:

1st. That the notes of R. G. Dunlap, on which the order of seizure was granted, were obtained through fraud and error, and false suggestions of the vendors.

2d. That the vendors sold 640 acres, or section 22 of the premises, without having any title whatever thereto, the title being still in the Government.

3d. That the vendors are justly indebted to the estate of R. G. Dunlap for the value of said section of land, and the premium on $50,000 worth of Citizens' Bank stock thereon, worth ten thousand dollars at that time.

4th. That the vendors represented themselves as the sole heirs of Cicero Jefferson, (alias Joseph Pepper,) when there was the interest of a half sister, (Mrs. Evans, not joined in the sale,) whose heir *have* now sued to evict the purchaser of 250 acres of said land and some of the negroes, which suit is now pending.

5th. That the defendants have failed to allow all the credits for payments made on the notes sued, on a payment of more than $3,000 having been shown.

6th. That the order of seizure and sale, illegally issued against the succession of a dead man, without having made it executory against the curator.

7th. That the order of seizure illegally issued against the property of said succession, before it had been contradictorily with the creditors, and the debts ordered to be paid by the judge of probates.

8th. That the mortgage on the negroes had been satisfied and paid, by the payment of the two first notes mentioned in the mortgage, before the said order of seizure and sale was granted.

9th. That the mortgage resting on section 22 (640 acres of this land) is null, the title to the same being in the United States; and also as relates to the back concession, the vendors not being owners of either.

10th. That the vendors have no right to collect any of the money on said notes, until they comply with their original contract, by producing and establishing a good title.

The petitioner, in injunction, prays that the sale be rescinded as to section 22, and the back concession to the same, and the note of R. G. Dunlap given up and cancelled; that the vendors be condemned to pay the estate of R. G. Dunlap, at the rate of fifty dollars per acre, for said section and back concession of land, and the amount of whatever the heirs of Delony E. Evans may recover in their suit for a portion of this property, and also allow the credit of $3,105 87; that the order of seizure and sale be set aside as to the negroes, it having *having* been paid and satisfied, and that it cannot be enforced until it is made executory, contradictorily with the creditors of R. G. Dunlap's succession; and, finally, that the vendors be decreed to pay for all improvements and costs.

I. In relation to the first exception, the sale from R. G. Dunlap to H. W. Dunlap cannot affect the present proceedings, which is against R. G. Dunlap. Whatever may have taken place between R. G. and H. W. Dunlap, subsequent to the sale by the vendors, and also subsequent to the issuing of the order of seizure and sale, cannot affect or operate upon the rights of the original parties. The contest is between the original vendors and their vendee, and has nothing to do with the equities or legal rights between the two Dunlaps; and, at any rate, R. G. Dunlap's vendee would only take his place, and have a right to resort to all equities and legal defences which *is* vendor had against the original vendors. In regard to the alleged sheriff's sale of the premises, as the property of H. W. Dunlap, there is no evidence of it in the present suit, and may be laid out of view; at any rate, could only be examined in a trial on the merits.

II. The second exception, relating to the return of the property, or rescinding the sale, must fall to the ground. It is only that portion of the land to which the plaintiffs had no title, the sale of which is subject to be rescinded. It is expressly alleged that the title is in the United States, and that the vendors had no right to sell it.

III. and IV. The exceptions setting up the plea of *res judicatæ* are now to be considered. They state, that the same matters now set up in the plaintiff's petition were decided by the supreme court between the same parties. If this were the case, the exception would prevail; but the facts of the case appear differently. The first appeal was simply in regard to the issuing of the order of seizure and sale. So far as it was concerned, the court passed on it. The second appeal was taken from a decision on the injunction of H. W. Dunlap, and was dismissed without deciding on the merits, because the order of seizure and sale was against R. G. Dunlap, to which H. W. Dunlap was no party; see 19 La. Rep., 405.

There is one ground alone which would seem sufficient to sustain the injunction, which is, that the order of seizure is prosecuted against the succession of a dead man, not regularly administered, and contradictorily with the creditors, but in a course of administration. It is a settled principle of our jurisprudence, that when a person dies, his succession goes into the probate court, and all claims against it must be settled there. But there are other strong grounds set out in the petition, which I think entitles the party to an injunction, and which can only be decided in a trial on the merits. The purchaser, H. W. Dunlap and his wife, now come in, and offer to intervene and contest all the rights and claims between the original parties, having purchased *pendente lite*, and liable to such judgment as may be rendered on the merits between the original parties. The exceptions must therefore be overruled.

(Endorsed.)—127; James Pepper vs. R. G. Dunlap; decision of Judge Curry, overruling the motion to dissolve injunction.

On Friday morning, December the 2d, the following entry was made on the minutes of said court:

JAMES PEPPER et al.
vs.
R. G. DUNLAP.

Petition of intervention of H. W. Dunlap and wife, filed by leave of the court.

Petition of intervention.

State of Louisiana, parish of Madison:

November term of district court, 1842.

To the Hon. Thomas Curry, judge of the 9th judicial district for the State of Louisiana, now holding sessions in and for the parish of Madison, in said district:

The petition of Hugh W. Dunlap, and his wife, Susannah M. Dunlap, citizens of the parish of Madison, in the State of Louisiana, respectfully showeth unto your honor, that since the order of seizure and sale was granted, in the suit No. 127, on the docket of the clerk of the district court for the parish of Madison, wherein James Pepper et al. are plaintiffs, and R. G. Dunlap is defendant, your petitioners, for a valuable consideration, purchased the right of the said R. G. Dunlap to all the property mentioned in the mortgage or authentic act of conveyance set forth in the plaintiff's petition for said order of seizure and sale, and that their titles to said property *has* been duly recorded in the parish judge's office for the parish of Madison.

Your petitioner further sheweth unto your honor, that, by the act of conveyance from R. G. Dunlap to your petitioner, H. W. Dunlap, your petitioner was subrogated to all the rights of warranty of every description against the vendors of said R. G. Dunlap. Your petitioner further sheweth, that the curator of R. G. Dunlap, deceased, has obtained an injunction to stay the proceedings in the above entitled suit No. 127, for certain causes set forth in the petition of said curator, and has also prayed that the contract between R. G. Dunlap and his vendors be in part annulled and set aside, as having been made for land that said vendors had no right to, the right to the same then being with the Government of the United States. The said curator has prayed, that the court will decree a judgment against the vendors of said R. G. Dunlap for several sums of money as set forth in the prayer of his petition, which is here referred to.

Your petitioners being *bona fide* purchasers, for a valuable consideration, of all the right said R. G. Dunlap had in and to all the property described in the mortgage annexed to plaintiffs' petition for order of seizure and sale, and all rights of warranty against the vendors of said R. G. Dunlap of every description whatever, and being purchasers since the commencement of the aforesaid suit No. 127, now come into court, and pray that they may be made parties to said suit; and they further pray, that your honor will grant the prayer of the petition of the curator of R. G. Dunlap in his petition filed in said causes, praying for the rescinding of part of the contract between said R. G. Dunlap and his vendors, or declaring the same a nullity, on the ground that said vendors had no right to sell land belonging to the United States Government. They also pray, that the entire prayer of the curator of R. G. Dunlap, deceased, be granted; they also pray, that whatever may be decreed in favor of said curator may then be decreed to your petitioners, as they are entitled to the same, being subrogated to all the rights of said R. G. Dunlap. And your petitioners further pray, that if they have mistaken their relief in their prayer, that your honor will grant to them whatever relief they are entitled in the premises in equity and good conscience, and they pray for general relief. And your petitioners pray, that the said James Pepper, George McCullough, and his wife, Louisa, and Sarah H. Evans, be duly cited to answer this petition; and as in duty bound they will ever pray.

COPLY, *Atty for Petitioners.*

I do hereby accept service of the within petition of intervention.

JAMES PEPPER.

December 16*th*, 1842.

Endorsed: No. 127. H. W. Dunlap & wife. Petition of intervention. Filed Dec. 2d, 1842.

J. W. COUCH, *Dep. Clk.*

Petition and Interrogatories.

HUGH W. DUNLAP, curator of Richard G. Dunlap, dec'd.,
vs. } 127.
JAMES PEPPER and al.

Ninth district court, parish of Madison,
State of Louisiana:

Interrogatories to be propounded to Henry O. McHenry and Henry Holmes, residents of the parish of Ouachita, Louisiana; the answers to which, when taken, are to be read in evidence on behalf of the defendants on the trial of above entitled cause:

Interrogatory 1st. Were you or not officers of the United States in the land office at Monroe, La., during the years 1841 and '2? If so, please state what office each one of you held during that time.

Interrogatory 2d. Are you not acquainted with Hugh W. Dunlap, of the parish of Madison, La.? And if yes, please state whether certain communications or letter, by you sent to the Commissioner of the General Land Office, during the year 1841 and 1842, relative to section 22, twenty-two, and the back concession thereof in township (16) sixteen, range (14) fourteen east, in the district of lands north of Red river, Louisiana, were at the instance and request of Hugh W. Dunlap; and if not, at whose instance were those communications made.

Int'y 3d. Was or was not Hugh W. Dunlap at Monroe several times during the year 1842? And if so, please state how many times he was there, and whether or not he communicated with you relative to the land above described; and if so, please state fully and explicitly the purport of all communications made by him to you, and whether or not other persons conferred with you relative to said land; and if so, what are the names of those persons.

Int'y 4th. Did you or not write to the Commissioner of the General Land Office relative to the above described land before he wrote to you upon that subject? And if yea, please give a copy of your said letter or letters to said commissioner as a part of your answer to this interrogatory.

Int'y 5th. Did or not said Hug. W. Dunlap pay or deposit the money with the receiver of public moneys for the purchase of lots 1, 2, 3, and 4, of said section 22; and if not, who paid for the same; and was or not said Dunlap present when said land was entered.

Int'y 6th. Was or not said Hug. W. Dunlap present, when the proof of the settlements made by the persons who entered said section 22 was made, by which they acquired pre-emptions to the same, and please state fully and explicitly all you know relative to said proof.

Int'y 7th. If you know anything to the advantage of the defendants in this suit please state it.

JAMES PEPPER,
Atty. for defendants.

HUGH W. DUNLAP, curator of Richard G. Dunlap, deceased,
vs.
JAMES PEPPER et al.
} 127.

Ninth district court, parish of Madison, La.:

To the honorable the judge of the ninth judicial district, holding court in and for the parish of Madison, Louisiana.

The petition of Sarah H. Evans, George McCullough, and James Pepper, the defendants in the above entitled suit, respectfully represent, that Henry O. McHenry and Henry Holmes, of the parish of Ouachita, Louisiana, are witnesses whose testimony is material in assisting the said defendants to define the demand of the plaintiffs on the trial of the above entitled cause, and that said witnesses reside out of the parish of Madison aforesaid. Wherefore, the premises considered, your petitioners pray, that a commission issue, directed to Lewis F. Lamy, parish judge of said parish of Ouachita, or some other judge or justice of the peace in and for said parish of Ouachita, whereby said judge or justice may be authorized to take the answers of said Henry O. McHenry and Henry Holmes to the foregoing interrogatories, and for general relief.

JAMES PEPPER,
For Petitioners.

State of Louisiana, parish of Madison:

This day personally appeared before me, the undersigned authority, James Pepper, one of the defendants in the above entitled suit, who being duly sworn, deposeth and saith, that the facts and allegations in the foregoing petition are true, to the best of his knowledge and belief.

JAMES PEPPER.

Sworn to and subscribed before me, this 8th of Feb'y, 1843.

J. W. COUCH, *Dep. Clk.*

Return.

Rec'd on the 8th February, 1843, and served on the same day of the same month by leaving a certified copy of the within interrogatories with Mrs. Dunlap, a free white person, above the age of 14 years, at, and living at, the domicil of H. W. Dunlap, in the parish of Madison, La., Feb. 14th, A. D. 1843. Mileage, $3 00. Service, 75c.

G. W. TARKINGTON, *Dep. Sh'ff.*

Endorsed.

127.—H. W. Dunlap, curator of R. G. Dunlap, dec'd, vs. James Pepper et al. Petition and interrogatories. Filed Feb. 8th, 1843.

J. W. COUCH, *Dep. Clerk.*

Let a commission issue as prayed for in the foregoing petition. Feb. 8th, 1843.

J. W. COUCH, *D'y Clerk.*

Order to withdraw receiver's certificate.

JAMES PEPPER ET AL.
vs. } 127.
R. G. DUNLAP.

Ninth district court, parish of Madison, State of Louisiana.

To the honorable Richard Charles Downes, parish judge, in and for the parish of Madison, La.

The petition of James Pepper, one of the plaintiffs in the above entitled suit, and att'y in fact for the others, plaintiffs, respectfully represents: that it is important, in order to enable *to* him to be prepared for the trial of said cause at the next term of said court, that he have leave to withdraw the receiver's certificate of the entry of the lands lying back of lots Nos. 23, 24, and 25, in township No. 16, range No. 14 east, in the district of lands north of Red river, La.; which said certificate is now on file in the above entitled suit—shews that the judge of said ninth district court is absent from the same.

Wherefore, the premises considered, petitioner prays that he have leave to withdraw said certificate, by leaving a certified copy thereof with the clerk, and for general relief.

JAMES PEPPER.

Order.

State of Louisiana, parish of Madison, parish judge's office:

It appearing to the undersigned judge of said parish that the judge of the ninth judicial district court for said parish is absent from and resident out of said parish, and that the plaintiffs are entitled to the conservatory relief sought for in the foregoing petition, it is therefore, and by reason of the law and the evidence, ordered, and decreed, that they be allowed to *widraw* from the records of the said court the receiver's certificate described in their said petition, upon leaving a certified copy thereof in the office of the clerk of said court, and filing with the papers of said cause this order.

Done and signed, this 16th day of March, A. D. 1843.

R. C. DOWNES, *Parish Judge.*

Endorsed.

127.—J. Pepper et al. vs. R. G. Dunlap, order to withdraw receiver's certificate.

Filed March 16th, 1843.

J. W. COUCH, *D'y Clerk.*

Order to withdraw receiver's certificate.

JAMES PEPPER ET AL.
vs. } 127.
R. G. DUNLAP.

Ninth district, parish of Madison.

It is ordered that James Pepper, one of the plaintiffs in the above entitled suit, have leave to withdraw the receiver's certificate of the entry back concession of section No. 22, in township 16, range 14 east, by leaving a certified copy thereof with the clerk.

Signed this 22d day of February, 1843.

THOS. CURRY,
Dist. Judge, Ninth Judicial District.

Endorsed.

127.—J. Pepper et al. vs. R. G. Dunlap; order to withdraw receiver's certificate. Filed March 16th, 1843.

J. W. COUCH, *D'y Clerk.*

Copy of Certificate.

Land Office at Ouachita, La., No. 3,521. Duplicate 15th July, 1836. Received from Sarah H. Evans, Maxwell D. Pepper, Jesse B. Pepper, Louisa Pepper, and James Pepper, of Concordia, La., the sum of six hundred and thirty-six dollars and sixty-nine cents, being in full payment for the lot No. 3, of section No. fifty-four, and the whole of section fifty-three, in township No. sixteen, of range No. fourteen east, containing five hundred and nine $\frac{35}{100}$ acres, at $1 25 per acre.

RAN. EASTING, *Receiver.*

$636 69—Endorsed—Filed 2d Dec., 1842.

JOHN T. MASON, *Clerk.*

State of Louisiana, parish of Madison:

I do certify the foregoing to be a true copy from the original on file in this office. Witness my signature and impress of the seal of the 9th district court, for the parish of Madison, this 18th day of March, anno domini 1843. JOHN T. MASON, *Clerk.*

Endorsed.

Received the original, of which the within is a true copy, 18th March, 1843.

JAMES PEPPER.

127.—Copy of duplicate filed 18th March, 1843.

JOHN T. MASON, *Cl'k.*

On Monday morning, 1st May, 1843, the following entry was made on the minutes of said court:

HUGH W. DUNLAP, curator,
vs. } 127.
JAMES PEPPER et al.

Answer filed.—*Answer.*

HUGH W. DUNLAP, curator of the succession of Rich'd G. Dunlap,
vs. } 127.
JAMES PEPPER et al.

Ninth judicial district court, parish of Madison, State of Louisiana.

The answer of Sarah H. Evans, George McCullough, and his wife, Louisa Pepper, residents of the State of Missouri, and of James Pepper, a resident of the parish of Madison, and State of Louisiana, denies all and singular the allegations in plaintiff's petition contained, except as hereafter admitted.

Respondents expressly deny that there was any fraud or misrepresentation on their part, or on the part of either of them, toward the said Richard G. Dunlap, in regard to the title to any portion of said land, or of any one of the said negroes, or in regard to any of the matters of agreement between them. Respondents shew that they inherited said property from their deceased relation; and that if any defect existed with title to the said property, or to any portion thereof, (which they expressly deny,) they themselves were ignorant of it. That said Richard G. Dunlap knew the source from which their titles had been derived, was acquainted with all the facts in relation to the said titles, and knew their *strenght* as *will* (at least) if not better than did your respondents; for being a lawyer of considerable reputation, he better knew what constituted a good title than did respondents. Respondents shew that the pretended titles, alleged in the annexed petition of said curator to have been acquired from the Government of the United States by Charles B. McKurman, Walter A. Greisham, John Bartlett, and Robert Burney, were acquired under the pre-emption law of 1841 by fraud and connivance, through the aid and assistance of said Hugh W. Dunlap, and for his own exclusive use and benefit. That neither of the said pre-empt*ions* ever lived on or cultivated said land; and that their rights to pre-emption having been acquired by fraud and collusion, and the land paid for out of the money of said Hugh W. Dunlap, whatever title said pre-emptors acquired, has in*cur*red to the benefit of these respondents. Shews that the claim of James James to section 22 was attempted to be set aside by the Commissioner of the General Land Office in consequence of the illegal interference of said Hugh W. Dunlap through his attorney George W. Copely; and that if the claim of James James to section 22 was not good and valid in law, that if such an equitable title as would have been confirmed by an act of Congress, had not said Hugh W. Dunlap presented the same by his illegal acts aforesaid; shews that the title to the back concession to said section 22 is good and valid; and if it is not, that it will be confirmed by act of Congress.

Shews that no suit was ever brought by Joseph M. Loony, as alleged in plaintiff's petition; but that the pretended suit that was filed was brought at the instance of said Hugh W. Dunlap by his brother-in-law, Chas. B. McKurman, who lives *with* same house, and is not a licensed attorney.

That, on the 18th day of April, 1839, R. G. Dunlap sold, transferred, and delivered to Hug. H. Dunlap, all the interest which he had to the property purchased by him from your respondents, particularly all his rights of warranty against them, by which the said Richard G. Dunlap lost all right which he might otherwise possibly have had to interfere in this matter, and that he could not have had a right to interfere without repurchasing the property from Hugh W. Dunlap. That the curator of his estate (being merely an agent to represent him) cannot now do what Rich'd G. Dunlap could not have done in his lifetime.

In answer to that part of plaintiff's petition, which asks for a recision of the sale made by these respondents to Richard G. Dunlap, they say, that if they could be placed in a situation near as good as that in which they were prior to the sale to R. G. Dunlap, they would not oppose the recision of the whole contract; but such recision is now impossible for several reasons: first, the property sold did not belong to Richard G. Dunlap at his death, does not belong to his succession, and cannot, by any contrivance whatever, be thrown into the said succession; consequently it can't be given up by the said curator. Second, the property is heavily mortgaged to pay the debts of Hugh W. Dunlap; it cannot possibly be freed from the payment of those debts, and consequently can't be given up in the condition in which it was when sold to R. G. Dunlap. And if the court should believe that this sale can be legally rescinded, then respondents aver that they received, from Richard G. Dunlap, 3,840 acres of wild lands, lying in the county of Washington, State of Mississippi, at the price of $20 per acre, by which the said Richard G. Dunlap paid $76,800 of the cash payment mentioned in the act of sale from respondents to Dunlap, and acknowledged to have been received by them.

That said land was not worth, at that time, more than five dollars per acre; and that this would not have given any thing near the amount the *this* give, except in the way of exchange. That the said land would not now bring in market more than one dollar 25-100 per acre; that they have sold the said land, and cannot return it in kind, but are willing (if necessary) to return the money received for it, or the present value of said 3,840 acres of land. The premises considered, these respondents pray that this suit be dismissed at plaintiff's costs, and that the injunction obtained against the execution in favor of respondents be dissolved, with damages, and that they recover against Hugh W. Dunlap, curator, &c., and John Milliken, his security, damages, at the rate of twenty per cent. on amount of judgment, and ten per cent. per annum interest, and two thousand dollars special damages, for attorney's fees, &c.; and that if the court should rescind, plaintiffs, in injunction, be ordered to receive the present value of the land in Mississippi instead of the 76,800 dollars mentioned in the deed; and that your respondents recover fifty thousand dollars for the value of the rents and profits of the slaves and land sold by them, and for general relief in the premises.

PEPPER & STOCKTON & STEELE,
Atty's for defendants.

Endorsed.

127, Hugh W. Dunlap, curator, vs. 127, James Pepper et al.; answer filed May 1st, 1843; Pepper, Stockton & Steele.

A. R. POTTER, *Dy. clerk.*

On Wednesday morning, May 10th, 1843, the following entry was made on the minutes of said court:

It is ordered, by the court, that all cases now at issue be set for trial to-day.

And on 16th May, the following entry was made of said minutes:

H. W. DUNLAP, curator,
vs. } 127.
JAMES PEPPER et al.

This case was taken up for trial, and not being finished the court adjourned.

And on the 17th of May, the following entry was made on said minutes:

HUGH W. DUNLAP, curator,
vs. } 127.
JAMES PEPPER et al.

This case was taken up, and not being finished the court adjourned.

And on the 18th May, 1843, the following entry was made on said minutes:

HUGH W. DUNLAP, curator,
vs. } 127.
JAMES PEPPER et al.

This case was again taken up, the evidence was closed, and the parties having been heard by their counsel, the court adjourned.

And on the 19th May, 1843, the following entry was made on said minutes:

Hugh W. Dunlap, curator,
vs. } 127.
James Pepper et al.

The court, in this case, this day rendered the following judgment:

By reason of the law and the evidence in this case, it is ordered, adjudged, and decreed, that the injunction sued out in this case be made perpetual, for the reason that said order of seizure and sale could not be prosecuted in its present shape against the succession of R. G. Dunlap, or against the intervenors as third possessors. And it is further ordered, that the plaintiffs, James Pepper et al., pay all costs of this suit. And it is further ordered, there be a judgment, as in case of non-suit, upon all the matters in contest in this suit against all the parties, except as above set forth.

James Pepper et al.,
vs. } 127.
R. G. Dunlap.

Leave granted to both parties to withdraw the papers filed by them in this suit, by leaving certified copies of the same; it is agreed that the maps filed in evidence in this case be taken up in case of appeal.

Statement of facts.

H. W. Dunlap, curator,
vs. }
James Pepper et al.

Plaintiff's evidence.—Contract between James Pepper and others, and Richard G. Dunlap, December, 1836. A. Admitted that the agreement marked A is in the handwriting of Richard G. Dunlap, a party to it.

Deed from R. G. Dunlap to H. W. Dunlap, dated 18th April, 1839, B.

Deed by James Pepper and others to Richard G. Dunlap, attached to the original petition for order of seizure, dated 28th April, 1837, C.

Letters of curatorship of H. W. Dunlap, of the succession of R. G. Dunlap, D.

Copy of the letters of instructions of the Commissioner General Land Office to surveyor general, dated 18th June, 1842, E.

Diagram of lots 22 and 52, T. 16, R. 14 E., F.

A. J. Loory, called as witness on part of plaintiff, says, the deed from James Pepper and others was passed before witness. Witness says he cannot recollect much conversation which passed before him when the deed was passed; he was busy writing. There was, he thinks, some harsh words were made use of. Witness thinks that the Mr. Pepper, after the conveyance was made, said that the bank stock could not be secured. Witness does not recollect whether or not this conversation was in presence of R. G. Dunlap; but witness *things* Dunlap had walked out.

John Montgomery called by the same. Witness says he heard Mr.

Aaron Lilly ask Cicero Jefferson, alias Joseph Pepper, for the money which he was to pay said Lilly for the purchase of sections 22, T. 16, R. 14 E. Said Cicero Jefferson said that he, Lilly, had given him no good title to the land, and had warranted it to him. Lilly said he had not warranted it, but sold him a quit-claim; Lilly said to Jefferson, to that he, Jefferson, knew all about the title, and the situation of the title, before he purchased it. Witness then lived at Tuscumbia, in Louisiana; he lived a few hundred yards from Jefferson's house. Witness heard Mr. Lilly and James Pepper talking on the subject of the land; witness says that he heard Mr. Pepper refuse to pay for the land, because Mr. Lilly could not make him a good title. Says Mr. Lilly threatened to cut off Mr. Pepper's ears, or whip him, and that Mr. Pepper, or Mr. Dunlap, afterwards gave him a draft for the money. Witness says it was the James' tract of land they were speaking of; that at the time Mr. Dunlap purchased from Mr. Pepper, there was something over one hundred acres cleared on James' tract of land.

Cross-examined.

Witness says the conversation between Lilly and Pepper occurred a short time after the sale to Dunlap; says he saw the draft after it was given. Witness says he is a carpenter, and not a surveyor; says he has been engaged as an overseer, but not in this country; some time since he acted in the capacity of overseer; has been on the upper side line of the land; does not know where the lower line is; does not know where the back line is; says he has seen Mr. Lilly and R. G. Dunlap in company with each other.

Petition of the heirs of Pepper, presented to the probate court of Concordia, marked G, offered by Dunlap. G.

Lafayette Jones, witness called by plaintiffs in injunction, says that Mr. Lilly sold Cicero Jefferson some land, and that there was some dispute about the title; witness says that he had frequently seen Mr. Dunlap and Mr. Lilly together the spring that the sale from Pepper to Dunlap took place; that Lilly was a very communicative and talkative man about his affairs; witness says there was a difficulty between Mr. Dunlap and Mr. Pepper about the title, and the payment of one thousand dollars, which was afterwards settled. That is, Gen'l Dunlap refused to pay the $1,000, in consequence of Mr. Pepper not having complied with some part of the agreement in relation to the sale of the land. Gen'l R. G. Dunlap afterwards paid the $1,000, as witness heard. This is the settlement witness spoke of. Does not recollect whether this passed before or after the deed was made before Louny; witness thinks the Peppers were waiting to get the money to go off; witness tried to settle the matter between them; witness does not know how much of the field was cleared when sold; there *was* burns on the tract sold, but does not think they extended to the James tract.

George W. Grove called by the same. Says he has been residing in this part of the country ever since 1820, in January; witness says in

1830 witness came to make a bargain for the James tract of land, the same now in issue; Lilly agreed to sell it to him for $3,000; witness, in consequence of understanding that James had had another tract confirmed to him, and that he could not have two grants to himself of this kind, he declined to take it; witness heard after this that Cicero Jefferson had purchased it. Afterwards, in conversation with Mr. Jefferson on this subject, Jefferson remarked to him that the title never had been confirmed, but that he intended to apply to Congress to confirm it; witness would suppose that, in January, 1837, there were about 100 or 125 acres cleared; witness is not certain as to quantity; witness says it is worth 30 or 35 dollars per acre to clear land as the land has been cleared subsequent to the purchase; to clear all the timber off, it is worth $50 per acre; witness says that the mill and mill-house, and gin and gin-house, cribs, and stabling, including everything done, he thinks could not be done for less than four thousand dollars; witness says he has been back on what he has been told is the back concession; that that land is not valuable in its present condition; a great deal of water in the back lands. If one owned no land in front of this back concession, he would not give much for it. The timber, witness considers, is worth more than the land, if one owned the front. A good deal of this back land is overflowed from water coming in some miles below.

Cross-examined.

Witness says if this front land, that is, the James tract, belonged to witness, he would consider it very valuable. He knows of none for sale of that quality. Some, probably in Milliken Bend, has sold as high as eighty dollars per acre, as witness understood. It was sold some four or five years ago, as witness understood.

Examined in chief.

Witness says he would not sell the James tract for $100 per acre, if he owned it. It is considered one of the very best tracts of land on the river. It does not cave, has a very high bank, and has every advantage.

Cross-examined.

Says James James lived on this tract of land in 1820. Witness thinks, in 1823, John Cameron undertook to cultivate the land. Does not know how he got possession. James and his family then lived on the Walnut bayou; staid there a little time; witness understood that James claimed the land; witness understood that James claimed the two grants, and could have but one.

Deposition of John Briscoe, taken by consent. H.

Deposition of Whitford. J.

Certificate of confirmation to James James, order of survey and survey, this lying in township 16, R. 15, and T. 15, R. 15 E. K.

A brief of the titles, filed by James Pepper and others, in the Citizen's Bank, preparatory to taking stock, taken by R. G. Dunlap out of said bank. L.

Valuation of the property, made for the Citizen's Bank. M.

Letter of the Commissioner of the General Land Office, relative to the No. 52, marked N.

It is admitted that the suit of Joseph W. Loony vs. H. W. Dunlap was handed to G. W. Tarkington to file, and that it was handed from C. B. McKierman to H. W. Dunlap.

Copy of notice to James Pepper, marked O.

Agreement between James Pepper and R. G. Dunlap, marked P.

D. S. Stacy, sworn for plaintiff in injunction, has done considerable business for the firm of Briggs, Lacoste & Co., and Reynolds, Marshall & Co. The firm of Reynolds, Marshall & Co. have had the control of the assets of the firm of Briggs, Lacoste & Co. since some time in 1837, to some extent; says, according to his understanding, that Reynolds, Marshall & Co. have been charged with the settlement of the affairs of Briggs, Lacoste & Co., and that Lacoste has generally been the active agent in those transactions. Witness says that he has conferred with Lacoste of Natchez, and Marshall of New Orleans, at the same time, in relation to the affairs of Herman, Briggs & Co., and Briggs, Lacoste & Co.

D. S. Stacy, sworn by plaintiff in injunction, says he has done considerable business for the firms of Briggs, Lacoste & Co., and Reynolds, Marshall & Co. The firm of Reynolds, Marshall & Co. have, to some extent, had the control of the assets and interests of the firm of Briggs, Lacoste & Co. since some time in 1837; and that, according to his understanding, Reynolds, Marshall & Co. have been charged with the settlement and liquidation of the affairs of Briggs, Lacoste & Co.; that C. A. Lacoste has generally been the active agent in those transactions. Witness has conferred with Lacoste and Marshall together in relation to the affairs of Briggs, Lacoste & Co. Witness heard Lacoste say that either Briggs, Lacoste & Co., or Reynolds, Marshall & Co., had been the owners of a debt secured by mortgage, as witness understood, on a plantation and slaves that R. G. Dunlap had purchased of the heirs and representatives of Cicero Jefferson, and that that debt had been taken up by the note of R. G. Dunlap, perhaps with some other persons on it as security; but this note was not secured by mortgage; and that Lacoste regretted they had permitted it to be done. Witness brought a suit on a note for $2,500, signed R. G. Dunlap, in the name of C. A. Lacoste, against H. W. Dunlap and James Pepper, and obtained a judgment against H. W. Dunlap, for a balance of over $800, unpaid on said note, with a mortgage on the above plantation and slaves. That witness had heard Mr. Lacoste say that he had received the note of a McKierman to secure the payment of said judgment for $850, which note has since been paid. The above suit is No. 380, in the district court, parish of Madison; and the note is dated April 28th, 1837, signed R. G. Dunlap, payable to the order of Sarah H. Evans, James Pepper, and George McCullough, and by them endorsed.

Letter of James Pepper, and memorandum, marked Q.

Suit No. 526, and answer in the case of Joseph M. Loony vs. H. W. Dunlap, marked R.

Certificate of mortgage, marked S.

Letter from register and receiver at Ouachita to James M. Downes, and advertisement, marked T.

Answers of James Pepper, marked U.

Admitted that R. G. Dunlap died 22d June, 1841, and that the writ here enjoined issued 7th June, 1842.

Writ of seizure, and endorsement of sheriff, and notice of seizure, marked V.

Evidence of James Pepper et al., def'ts in injunction.

Deed from Aaron Lilly to Cicero Jefferson, marked - -	1
Bond from Cicero Jefferson to Lilly, and receipt on the back, marked - - - - - -	2
Agreement between James Pepper and R. G. Dunlap, marked -	3
Receiver's receipt, marked - - -	4
Receiver's receipt, marked - - -	5
Inventory, marked - - - - -	6
Inventory, marked - - - - -	7
Copy of letter to register at land office, Ouachita, marked -	8
Letter from Thomas H. Blake to James Pepper, marked -	9
Bill, certificate, and report, marked - -	10
Letter from Thomas H. Blake to James Pepper, marked -	11

Edward Armorer, sworn for def't in injunction, say: He has known H. Dunlap since April, 1837. Never knew Richard. H. W. Dunlap has had possession of the land on which he lives ever since 1837. Wit. formerly knew the James tract, taking it for granted that the gin is on the James tract; the fields above that, towards Young's point, would be on the James tract. This field wit. has seen Gen. H. W. Dunlap's hands at work in, and his overseers attending to them, last year; and this year the land was cultivated by them. Wit. has not had much intercourse with Gen. Dunlap, but he sees no change in the place. Wit. passes there frequently. Wit. cannot say he has ever seen any other person living on it. Wit. knows a man by the name of Robert W. Burney who has resided at Young's point ever since he knew him, and when he was in the State. Young's point is about a mile from the James tract. Wit. never knew or heard that Burney lived on the James tract. Wit. does not know John Bartted; he knows Charles McKierman. Mr. Greisham was last year, and is this, the overseer of H. W. Dunlap. Wit. lives 3 or 3½ miles from Young's point. It is called, from his house to Gen. Dunlap's, 5 miles.

Cross.

Wit. has frequently passed Young's point without seeing Burney; sometimes, but not often, it happens that it is 3 or 4 weeks that wit. is not at Young's point; Burney might be absent a few weeks and settle on land without witness knowing it. Wit. never saw Gen. Dunlap in the field as well as he recollects. It is possible that Gen. Dunlap might have rented this land from others without his knowing it.

Examined in chief.

. Wit. says he meant to say that it was about a mile from Young's point to the field on the James tract. The road on the James tract runs in front.

James Hogan, called by deft. in injunction, says: There is a field on the James tract, above the gin. Wit. says last year he was frequently at Vicksburg; this year frequently below, the Gen. Dunlap passing his place. As far as witness has had any knowledge of this place Gen. Dunlap has had possession of the place; it has been represented as his farm. From the time the road strikes the field going from Walnut bayou to Vicksburg, which is the road the witness travels, there is no other house, other than Gen. Dunlap's, seen on the James tract. There may be one back, as witness does not know how far this tract runs back. The only houses wit. has seen are in front; wit. thinks there are some shelter in the field. Witness would suppose the house furthest back is not more than a hundred yards from the road. Wit. has frequently seen Mr. Greisham in this field, and negroes; wit. does not know General Dunlap's negroes; wit. has not known any other person to be in possession of that field; wit. knows Robert W. Burney; wit. thinks he has always made his home at Young's point. Wit. has never seen Burney in possession of any of the James tract; wit. has a very slight acquaintance with John Bartlett; wit. has seen him at home, he lives on M. McKierman's land, or what is called McKiernan's; it is some 5 or six miles from the James tract; wit. seen him on the McKiernan place last year; wit. knows Charles B. McKiernan; wit. has seen McKiernan frequently in his office at the overseer's house at Gen. Dunlap's; this office is below the lane, some 200 yards; wit. never saw Charles McKiernan residing on any part of the land above the gin; wit. has heard that Charles McKiernan is the brother of the wife of Gen. Dunlap. Bernard McKiernan, who owns the plantation, overseered by John Bartlett, is said to be the father of Mrs. Dunlap and Charles McKiernan. Wit. says there is a hewed log double house on the place in which he has not been. It is above the lane, and further back than any other of the building. Wit. does not know whether or not there was any houses built back; he has seen none. Last year, wit. does not what time, wit. and his sister stopped, out of a shower of rain, at old Mr. McKiernan's, and seen Bartlett, as before spoken of; Charles McKiernan frequently passes backwards and forwards, and he thinks he goes to his father.

Cross-examined.

Says last year he was not very frequently at Young's point; this year he has been there oftener; last year he saw people living in the hewed log house at Gen. Dunlap's. Does not know they were.

Dr. Lawson, called by def't in injunction: There is a considerable field extending from where the old gin was burned up towards Young's point. This field was cultivated last year, but does not know from his own knowledge by whom. Witness has known Robt. W. Burney some 3 years; he has resided at Young's point; wit. lives about 3 miles from the point; wit. says he is at the point sometimes twice per week, and sometimes there not for a month. He generally sees Burney there; Burney was sick last year; wit. thinks seven bales of cotton to the hand is a fair average for him.

Sam. Hogan, called again by def't, says: The office of McKiernan, at Gen. Dunlap's, is some 80 yards from the river; this house has always been considered the overseer's house.

Scale, called by same, says: He knows what is called the James tract of land from the manner marked on the map; he passed there frequently, during the latter part of the summer last year, some three or four times a month. He was acting as deputy sheriff. Did not see any other person than Gen. Dunlap reside on it. Has seen Gen. Dunlap's hands and overseers on it; wit. thinks lands in 1840 was worth rent, per year, about $5 per acre; in 1841 about the same; in 1842 does not know. In 1840 the hire of a field hand was worth about $100 to $120 per year; in 1841 about the same. In 1842 probably a little less, though but little. Wit. has known Robert Burney since 1840; has always found him at Young's point, and has never him claim any other residence. Wit. knows Charles McKiernan; he resided at Gen. Dunlap's; that is, he ate at his table and slept in the office heretofore described. Wit. would suppose this house not more than one hundred yards from the river bank.

Cross-examined.

Says Burney might have gone and settled a pre-emption without witness knowing.

Thomas B. Scott, called as a witness by def't, says: He put the property seized in the hands of Greisham, as shown by paper marked 12. Paper marked 12.

Thomas B. Scott, called again by def't, says: He commenced planting in 1838; cotton was higher in price then than now; land and negroes were also worth more. There is land near where he lives that he thinks between $3 or 4 dollars per acre.

William Amonett, called by same, says: He is acquainted with the price of land in the woods, back lands, and thinks they are worth 10 dollars per acre. He can get one tract for less.

Deposition of McHenry and Holmes, register and receiver at Ouachita	No. 13.
Deposition of Ben. James	14.
Deposition of Robt. Ford	15.
Deposition of George Watts	16.
Certificate of mortgages vs. Dunlap	17.

Lafayette Jones, called as a witness by defendant in injunction.

Witness says, that Mr. Loony, whose wife was half sister of Cicero Jefferson, and who is now dead, leaving her husband and their child, now living, was about Mr. Pepper's, where his child lived, some time about the time the sale was made by the Peppers to R. G. Dunlap. He might not been there when the sale was made, and thinks he was there before the sale was made. Loony was there backwards and forwards. Witness says, Richard G. Dunlap was on the place pretty generally from the time he took possession until the deed was made before Loury, notary. R. G. Dunlap, a portion of the time, occupied the double cabin of Cicero Jefferson, the same, the new house was unfinished. The defendants, Pepper, were on the place but one summer, they left shortly after the sale.

Cross-examined.

Says he does not recollect when Loony left, but he, Loony, said that he left and took his child away for the reason that the Peppers refused to allow his child any part of the estate of Joseph Pepper. Loony left some time before the Peppers. Witness saw Loony here last term of the court. Witness understood from Loony, that he came to prosecute the suit against Dunlap. Some years since, he came here, as he said, for the same purpose, and staid at the house of witness; he had his little boy with him.

Witness says, that H. W. Dunlap told him last July, that he was going to Monroe to see about some property which he said had been taken away. H. W. Dunlap asked him where James Pepper was, and said to witness, he was going also to see about the title of the land; that he had heard that there was some difficulty as to the title, and he was going to see about it, and that on his return he would let Pepper know. Witness told Pepper what Dunlap had told him. H. W. Dunlap told witness, at the same time, that he had received a letter advising him of that difficulty in the title.

Admitted, that this letter relative to the titles to lot No. 3, sec. 54 and sec. 53. Witness says, that Gen. Dunlap said to him, that he believed there had been a mistake in setting those entries aside.

Copies produced from the General Land Office - - No. 18.

Evidence of the defendant in injunction.

Deposition of Bryant, and copies attached - - -	W.
Patent to C. B. McKiernan - - - -	X.
Same to Walter A. Greisham - - - -	Y.
Same to John Bartlett - - - -	Z.
Same to R. W. Burney - - - -	AA.

George W. Grove, called by defendant in injunction.

Says he knew, from the report of the Commissioner having confirmed one claim to James, and having not confirmed the tract in controversy, that this land, called the James tract, was public land, and that James had no good title to it. That this evidence is taken merely to show with what faith the parties have acted, that is, the Dunlap and Peppers.

Witness says, when he was about buying this land from Lilly, as stated in his former testimony, Lilly told him the title was not entirely good, but he would have it made good. Witness says he has been inquired of, by several persons in the neighborhood, whether or not this was vacant land; and whether or not he thought they could not settle on it and acquire a pre-emption. Witness told some of them that he thought they could, by settling back or out of Gen'l Dunlap's field in front. Witness has been inquired of by Mr. Hunter, for one; and last summer Mr. Briggs asked witness if he did not wish to enter into a speculation of this kind, in relation to this land, and witness has heard several persons speak of this matter.

Cross-examined.

Says, under the present law, as witness understood it, he thinks Mr. Briggs could stay long enough to get a pre-emption in a place, as it takes but a short .

George W. Copely, called by defendant in injunction.

Says, so far as witness understood, Gen'l Dunlap went to Monroe in July and October, to see about a suit which he was interested in, as witness understood, but which was in the name of Commercial Railroad Bank of Vicksburg against Vickers. The sheriff would not seize without indemnification, and witness, as attorney for plaintiff, would not do so without seeing Gen'l Dunlap. When he went, they gave the bond. A. M. Slater filed an injunction in case, and Gen'l Dunlap went in October to see about it. The suit was for a large amount, some six or seven thousand dollars. Witness wrote a letter advising General Dunlap to go to Monroe and see about this matter; and, consequently, Dunlap went accordingly.

Cross-examined.

Says he is no more the representative of the United States, in the Ouachita land district, than any other good citizen. Witness says, as well as he recollects, as to the contents of the letter addressed to him by the Commissioner of the General Land Office, was, that he, as he was the attorney for Gen'l Dunlap in this suit, he wished to know what was the situation of the title to the land; witness thinks he suggested in that letter that the title was doubtful, and he wished for Dunlap to know. The reason why he wrote this letter was, that every body was talking about it, and he wished to go to the fountain head for knowledge on the subject; witness thinks the object of his letter was to find out the true situation of the title to the land; witness had been, prior to that time, employed by Gen'l Dunlap in the suit of the Peppers against Dunlap; the inquiry had relation to these suits.

Charles B. McKiernan, sworn on part of the plaintiff in injunction.

Witness says he heard several persons speaking about this James tract of land, some person, particularly, who spoke of vacant land, which witness understood, by the description which he gave of it, though he did not call the tract by name, to be Gen'l Dunlap's tract, that is, the James tract. This person said he expected a man from Madison county, or Hinds county, Mississippi, and that that man would bring money, and through him they would enter the land. This conversation witness told to Gen'l Dunlap within a short time; witness asked Dunlap if he could prevent this matter; who said that he could not, without resorting to violence, and that he did not intend to do that; he had known more men killed by contests in relation to pre-emption, than any other, and he did not intend to risk his life; witness then remarked, that if it were public land, he would make a pre-emption on it, which witness did; witness says the other three pre-emptions on the land, were advised by witness to get pre-emptions, which they did; witness says that there was an arrangement between Gen'l Dunlap and witness, that Dunlap was to pay witness $500 per year for the use of his part of the land. Dunlap agreed with the other three for the use of their part of the land, but the price was not fixed, he was to pay what was right; the $500 was to cover also Burney's part, as witness now owns Burney's part.

Cross-examined.

Says, these houses, built by the pre-emptioners, were built near the back fence on the James tract, outside of the field; witness supposes it might be 800 or 900 yards from the river—it might be more or less; it is merely guess work. The land which the pre-emptioners had in cultivation was inside of the field immediately in front of the cabins—the crop was planted by Gen'l Dunlap or by his overseer, Greisham; witness thinks it was in August that the pre-emptors first made claim to any part of the land. The crop was planted by Gen'l Dunlap's hands, and gathered by Lucas and two or three others, with their hands, say some forty or fifty. They shared the crop with Gen'l Dunlap. Witness says, not to his has Burney staid on the place since the pre-emption was granted.

Examined in chief.

Witness says, when the settlements were made, he thinks Gen. Dunlap was not at home; witness knows of no arrangement between Gen'l Dunlap and any of the pre-emptors, that he was to get the land which the pre-emptors were to cover.

Cross-examined.

Says he gave Mr. Burney 3 notes, of $500 each, for the purchase of his land entered under the pre-emption. These notes are negotiable. He says there are no division fences in the pre-emptions. The notes given to Burney were due *a* 6, 12, and 18 months. The purchase was made after the patents were issued.

Execution of injunction admitted.

State of Louisiana, parish of Madison:

I do hereby certify the foregoing to be all the evidence and documents adduced on the trial of this cause.

Witness my signature this 18th day of May, A. D. 1843.

JOHN T. MASON, *Cl'k.*

Endorsed. 127—H. Dunlap, curator, vs. James Pepper et al. Statement of facts filed May 19th, 1843. $12 75.

A. R. POLLIN, *D'y Cl'k.*

Deed from Pepper to R. G. Dunlap.

Articles of agreement made this twentieth day of December, in the year 1836, between James Pepper, of the State of Louisiana, and parish of Concordia, of the one part, and Richard G. Dunlap, of the other part, witnesseth: That said Pepper hath this day sold unto the said Dunlap twenty-two hundred and eighty acres of land in said State and parish, with one section and three quarter sections fronting on the river Mississippi, it being the plantation owned by Cicero Jefferson, with the back concessions. The said Pepper hath also sold unto the said Dunlap the twenty negroes now on said place, with all the stock, provisions, tools, &c., all things on the place except the private furniture of the mother and sister of said Pepper, and is to give said Dunlap possession of said property on the first day of January next. For which property the said Dunlap is to give one hundred and thirty-two thousand six hundred dollars, to be paid as follows: The said Dunlap is to let said Pepper have nineteen hundred and twenty acres of land lying on the Mississippi, in the State of Mississippi, which Hugh W. Dunlap purchased of Major Peyton, provided said Hugh W. Dunlap hath not disposed of, or engaged to dispose of, said tract; and provided there should not be a greater portion of said land subject to overflow than is of the plantation sold by said Pepper to said Dunlap; but if either of these conditions shall prevent said Pepper from getting this tract of land, then he is to take from said Dunlap other lands off from the river, at twenty dollars per acre, in lieu of said 1,920 acres, but the same shall be good cotton lands; said Pepper is to examine said 1,920 acre tract in forty days after he is notified that it has not been disposed of, and then notify Hug. W. Dunlap, of Clinton, whether he likes it on the aforesaid conditions, and if it has a greater portion of overflown lands than before described, then said Pepper is to have other back lands, as before said, which he is to examine by the first of March; and should said back land not have a greater portion of overflown lands than the place which he has sold to R. G. Dunlap, and it should be good cotton lands, then it is to be conveyed, with general warranty titles, to said Pepper, as is to be the 1,920 acres tract, should it be chosen as aforesaid. The said Dunlap is to give said Pepper fifteen thousand dollars, or a note, or accepted bill, which shall enable him to obtain the said sum of money by the first day of March next, and then give said Pepper his notes for sixty thousand dollars in six equal annual payments; the first ten thousand to fall due on the first of March, 1838, and the other five notes on each succeeding first day of March. After said Dunlap shall pay said first payment, $15,000, the said Pepper is to convey, and cause to be conveyed, to said Dunlap, the aforesaid plantation of 2,280 acres, with the negroes and all the property aforesaid; and then the said Dunlap is to give a mortgage to said Pepper on the upper six hundred and forty acres tract, with the back concessions, and on ten of said negroes, for the security of the said sixty thousand dollars; but as soon as the first ten thousand dollars shall be paid, he is to release the mortgage on the negroes; or if said Dunlap shall give other good notes, or his own, with good endorsers, for said ten thousand dollars, then the negroes are not to be mortgaged. Should there be any stock allowed to said Pepper, his mother, brothers that are dead, and his sister, said Pepper is to have assigned, or hold the same for said Dunlap, or do what may be most advisable for said Dunlap's interest; said Pepper is to give said R. G. Dunlap a regular chain of titles for the aforesaid land and negroes, at the time he shall be paid the aforesaid fifteen thousand dollars; which titles, when produced, shall be deemed good and sufficient titles for said property, and paramount to all other titles.

For the performance of these articles we bind ourselves, our heirs, &c., to each. Witness our seals.

JAMES PEPPER, [SEAL.]
R. G. DUNLAP. [SEAL.]

Attest: MILES C. FOLKES.

Parish of Concordia, Louisiana:

Know all men by these that we, Sarah H. Evans, Louisa McCullough, and George McCullough, all of said parish, do hereby bind ourselves, our heirs, &c., unto Richard G. Dunlap, his heirs, &c., to satisfy and confirm the within contract between James Pepper and said Dunlap for the sale and conveyance of the within named plantation and negroes, &c.

Witness our hands and seals, Jan'y 18th, 1837.

SARAH H. EVANS, [SEAL.]
LOUISA McCULLOUGH, [SEAL.]
GEORGE McCULLOUGH. [SEAL.]

JOHN M. ANDERSON.

State of Louisiana, parish of Concordia:

Before me, William L. Poindexter, a notary public in and for said parish, duly commissioned and sworn, personally come and appeared John M. Anderson, the attesting witness to the within ratification of Sarah H. Evans, Louisa McCullough, and George McCullough, and being duly sworn, he declares and says, that he was present, and did see the said Sarah H. Evans, Louisa McCullough, and George McCullough, sign, seal, and deliver the same, as their proper act and deed, on the day and year therein mentioned, for the use and purposes therein expressed; and that he, this deponent, signed the same in attestation thereof.

JOHN M. ANDERSON.

Sworn to and subscribed before me this 30th March, 1837.

W. L. POINDEXTER, *Not. Public.*

Endorsed. 127,—Articles of agreement between James Pepper and R. G. Dunlap.

Attached to the above is a copy of the authentic act from Peppers to R. G. Dunlap. See page 6, *et sequitur—A.*

Deed from R. G. Dunlap to H. W. Dunlap.

State of Louisiana, parish of Madison:

Be it known, that on this eighteenth day of April, A. D. one thousand eight hundred and thirty-nine, before me, Alfred J. Loury, a notary public, duly commissioned and sworn, personally came and appeared Richard G. Dunlap, a citizen of the republic of Texas, who said and acknowledged, that, for and in consideration of the sum of one hundred and thirty thousand dollars, ($130,000,) to him paid by Hugh W. Dunlap, a citizen of the county of Hinds, State of Mississippi, as follows, viz: Ninety-one thousand eight hundred dollars cash in hand paid, which is the amount the said Hugh W. Dunlap has paid to James Pepper, George McCullough, and Sarah H. Evans, the former proprietors of the property herein conveyed to H. W. Dunlap; also Hugh W. Dunlap's obligation or bond to pay to the said Richard G. Dunlap the sum of thirty-eight thousand two hundred dollars, as soon as the said R. G. Dunlap shall obtain a full and complete title from the former proprietors of the property as herein conveyed and sold; which obligation or bond is of even date with this act.

Now, for and in consideration of the premises, the said Richard G. Dunlap has this day granted, bargained, sold, and delivered, and by these presents do grant, bargain, sell, and deliver, *will* full guaranty against all debts, liens, mortgages, suits, evictions, or incumbrances whatever, unto the said Hug. W. Dunlap, the following described piece, parcel, or tract of land, and the following named eighteen negro slaves, viz, all that plantation situated above the town of Tuscumbia, fronting on the Mississippi river, and composed of the following described lots: section number twenty-two, containing six hundred and fifty acres, and the back concession to said section, number twenty-two; also fractional sections, number twenty-three, twenty-four, and twenty-five, section number fifty-three, and lot number three of section number fifty-four, containing in all two thousand two hundred and eighty acres, (2,280;) all of the above named land lies in township number sixteen, range number fourteen east, in the district of lands north of Red river, Louisiana; also the following named eighteen negroes, slaves, viz, Jim, Isam, Clem, Bob, Sil, Silvia, Jacob, Nelson, Henry, Old Jacob, Henry, Richard, Peggy, Caroline, Louisa, Nelsy, Saul, Anthony, which negroes are now on the above named plantation, except Jim, who has been runaway near two years; also all the stock of horses, hogs, cattle, farming utensils, &c., belonging to said plantation; to have and to hold the above described piece, parcel, or tract of land, and the above named eighteen negroes, unto the said Hugh W. Dunlap, his heirs, and assigns forever; and the said vendor hereby further promises, that he, and *he* heirs, shall and will forever warrant and defend the property herein conveyed, against all legal claims and demands whatever; the said vendor moreover transfers unto the said purchaser, all the rights of action and warranty to which he is entitled, against all the former proprietors of the property herein conveyed, subrogating said purchaser to the said rights and actions, to be by him enjoyed and exercised in the same manner as they might have been by the present vendor. The parties waive the production of a certificate of non-mortgage, on the property above described, from the office of the recorder of mortgages for the parish of Madison, or the parish of Concordia, La., and release me, notary, from any responsibility on account of said certificate not being produced. This done and passed the day and year first above written, in presence of Philippe Maher and C. B. Minnis, competent witnesses, who have signed these presents, together with the parties and me, notary.

Original signed: R. G. DUNLAP,
H. W. DUNLAP,
A. J. LOURY,
Notary public.

Teste:—
PHILLIP MAHER,
CATESBY B. MINNIS.

State of Louisiana, parish of Madison:

I hereby certify the above to be a true and correct copy of the original act, as on file and record in my office, at Milliken's bend, Louisiana.

In testimony whereof I have hereunto set my hand, and affixed my seal this 24th day of April, A. D. 1840.

[SEAL.] A. J. LOURY,
Notary public.

Endorsed.

127.—R. G. Dunlap's deed to H. W. Dunlap, filed 16th February, 1841. JOHN T. MASON, *Clerk.* B.

Exhibit C, see page 6. C.

Exhibit D.—Letters of curatorship. D.

State of Louisiana, parish of Madison:

Court of Probates.

Whereas, by an order of said court dated the 7th day of December, A. D. eighteen hundred and forty-one, Hugh W. Dunlap has been appointed curator of the succession of Richard G. Dunlap, deceased, and has taken the oath prescribed by law, and give bond to the satisfaction of said court. Now, therefore, be it known, that the said Hugh W. Dunlap is duly empowered to do and perform all and singular the duties of curator of said succession. Witness the signature of the judge, and seal of said court, this 8th day of December, A. D. 1841.

[SEAL.] R. C. DOWNES, *Judge.*

A true copy.—Attest: R. C. DOWNES,
Parish judge.

Endorsed.

Succession of Richard G. Dunlap, letters of curatorship D, *copy.*

Exhibit E.

General Land Office, June 18th, 1842.

Sir:—Being satisfied from the evidence submitted and on file in this office, that the claim of James James, B, No. 115, was improperly located and laid down, on section 22, in township 16 N., range 14 east, in the district of lands north of Red river, and that the said *tract* is *public* land, you are hereby instructed to have said section surveyed, and laid off in lots corresponding with the adjacent land, a plat of which you will prepare, containing the measurements and acres marked thereon, which you will transfer to the register at Ouachita; you will please furnish this office a copy of said plat properly authenticated; your early attention is required to the requisitions contained in this letter.

I am, sir, very respectfully, your obdt. servt.,

THOMAS H. BLAKE, *Commissioner.*

F. D. Newcomb, esq., *surveyor general, Donaldsonville, La.*

Endorsed.—E.

General Land Office, June, 1842.

I, Thomas H. Blake, commissioner of the General Land Office, do hereby certify, that the within is a true copy from the record of this office. In witness whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

THOS. H. BLAKE. [seal.]

Exhibit F, see original, (see page 92.)

Exhibit G.

To the hon. George S. Guion, judge of the probate court in and for the parish of Concordia, State of Louisiana:

Your petitioner, Jesse B. Pepper, would respectfully represent unto your honor, that one Cicero Jefferson, late of the said parish, died on or about the sixth day of July, 1835, leaving a large and valuable estate, consisting of lands, negroes, farming utensils, and rights and credits, all within the parish and State aforesaid. Your petitioner states unto your honor, that he, together with Sarah H. Evans, Louisa Maxwell, D. and James Pepper, are the heirs and legal representatives, and are the brothers and sisters of the said Cicero. Your petitioner states, that the said brothers and sister of said deceased reside at this time in the State of Illinois.

Your petitioner states, that the said Jefferson, from motives unknown to your petitioner, after his arrival in the State of Mississippi, in which he resided ten or twelve years, before his location in the parish of Concordia, assumed and passed by the name of Cicero Jefferson, though, in truth and in fact, his family name is that of Pepper, to wit, Joseph Pepper. Your petitioner states, that said Jefferson, alias Joseph Pepper, emigrated from the State of Tennessee, in which State the family, mother, brothers and sisters, were at that time residing, about ten or twelve years past; and during that time carried on and transacted business under the assumed name of Jefferson.

Your petitioner, however, represents unto your honor, that he will able to establish the genuine name of the said Jefferson, and to that end, claiming the right of succession as one of the heirs of the said Jefferson, prays your honor to grant such time as may seem meet and proper for your petitioner, by testimony, both by oral and written, to establish his rights, together with that of his brothers and sisters, of this said Jefferson, to the inheritance of the estate of said deceased.

Your petitioner further prays, that an order be made to take the deposition of those persons by whom your petitioner will be enabled to prove the facts above stated; the name and residence of many of said witness not now known to your petitioner.

Your petitioner prays, that inventory of the property of the succession of the said deceased may be taken, and that he, together with his mother, brothers, and sisters, be recognised by order of court as heirs of said succession, and that an appointment be made of some suitable and proper person to represent the absent heirs of the said deceased, and to grant such other and further relief in the premises as to your honor may seem meet; and, as in duty bound, your petitioner will ever pray, &c. **RAWLINGS & ARNATT,**

Attorneys for petitioner.

B. G. Tenney, counsel for the absent heirs of the succession of Cicero Jefferson, deceased, comes into court, and denies all the allegations in said petition set forth, and especially denies that the plaintiff, Jesse Pepper, is an heir of the said Cicero Jefferson.

B. G. TENNY,

Counsel of absent heir.

In this case, after hearing the parties and the evidence, it is considered by the court, that the claim of the petitioner, Jesse B. Pepper, together with his brothers, Maxwell D. Pepper and James Pepper, his sister, Louisa Pepper, and his mother, Sarah H. Evans, as heirs of Cicero Jefferson, (alias Joseph Pepper,) deceased, is clearly proven and sustained by the testimony; the court being satisfied that the real name of the said Cicero Jefferson was Joseph Pepper. It is therefore ordered, adjudged, and decreed, that *that* the said Jesse B. Pepper, Maxwell D. Pepper, James Pepper, Louisa Pepper, and Sarah H. Evans, be recognised as heirs of the said Joseph Pepper, alias Cicero Jefferson, deceased, with full power to exercise all the rights appertaining to their quality of heirs as aforesaid.

Done in open court, this fifteenth December, 1835.

GEORGE S. GUION, *P. judge.*

State of Louisiana, parish of Concordia, ss:

I certify the foregoing and within petition and answer and decree to be a true copy of the original, as filed and of record in my office.

In testimony whereof, I have hereunto set my hand and seal of office, this 15th December, A. D. 1835.

GEORGE S. GUION, *P. judge*.

Endorsed, G.

Exhibit H.

John Brisco's deposition.

H. W. Dunlap, curator, &c.
vs.
James Pepper et al.

Ninth district court, May term, 1843.

Interrogatories to John Briscoe, the answer to be read in evidence in the above suit:

Interrogatory 1st. Are you acquainted with the defendants in the above cause, and were you *you* acquainted with Cicero Jefferson, (alias Joseph Pepper,) in his lifetime?

Int. 2d. Do you, or not, know whether said Cicero Jefferson (alias Joseph Pepper) and James Pepper, his mother and sister, Mrs. McCullough, and George McCullough, knew that the right to the land of section 22, in township 16, of range 14 east, of the lands north of Red river, was in the United States Government at and before the time they sold the same to R. G. Dunlap? If so, state all you know on that subject, and all you ever heard either of the parties say on that subject.

Int. 3d. Did you, or not, ever hear Aaron Lilly demand the consideration money from all or any of said defendants, or Cicero Jefferson, (alias Joseph Pepper?) If so, state what they said to him.

Int. 4th. Did you ever hear Aaron Lilly say any thing about his selling section 22 to Cicero Jefferson; what he was to receive; and what description of title he made to said land; and what he said to C. Jefferson about the title at and before he sold the same to him? If so, state all you ever heard on that subject from A. Lilly or Cicero Jefferson.

Int. 5th. Do you know what H. W. Dunlap went to Monroe for last July and October? If so, state what you know on that subject, and how you derived your information.

H. W. DUNLAP,
For plaintiff.

We agree to take the deposition of John Briscoe, subject to all legal exceptions as to competency and admissibility, when taken.

STOCKTON & STEEL, and
J. PEPPER,
For defendants.
H. W. DUNLAP.

Richmond, La., *May 19th*, 1843.

(Endorsed.)—127; interrogatories to John Briscoe, filed May 9, 1843. A. R. POLLIN, *Dy. Clk.*

Answers.

H. W. Dunlap, curator, &c.
vs.
James Pepper et al.

Answer to int. 1st. I am acquainted with both plaintiff and defendants in the above entitled suit, and was acquainted with Cicero Jefferson, alias Joseph Pepper, from the year 1828 till his demise.

Int. 2d. Answer. I do know that Cicero Jefferson, during his lifetime, and shortly previous to his death, in conversation with me in regard to the title to section 22, township 16, range 14 east, of the land north of Red river, said that he had no title to said section of land; that, insomuch as James James's title to said section was then in doubt, that doubt existing from the fact that said James James had already one confirmation from Government of Spanish grant to his quarter of land, under the laws regulating the same, and that he would not pay Mr. Lilly, of whom he purchased the same, on that ground. I do know that Cicero Jefferson did know that the titles, at the time of his death, to said section, *was* then in the Government, and his only hope of ever obtaining a title to the same was through Congress, and refused to pay Mr. Lilly the debt due Mr. Aaron Lilly, made by him for said section of land.

3d, is answered by my second answer.

Answer to int. 4th. I have frequently heard Mr. Lilly, during his lifetime, say, and I think once in the presence of Cicero Jefferson, when talking about the sale of said section of land, and consideration money, that Mr. Jefferson ought to pay him (Aaron Lilly) the purchase money, as he (Aaron Lilly) had only sold to said Cicero Jefferson (alias Jo. Pepper) his, Aaron Lilly's, *quit claim*, and that Cicero Jefferson knew all the facts in relation to the titles when he made the purchase of Mr. Lilly, and there could be no possible chance to prevent the payment of said purchase money. I think that the sale of said land was "bona fide between the parties, but do not precisely know, but believe, principal of the purchase money to have been $1,500 of said debt, and Jefferson still refused to pay for the land, although he had only a quit claim from Aaron Lilly to pay the amount of the purchase money due said Lilly, until he got a good title thereto. Since then I have seen Mr. Lilly and Mr. James Pepper together, when Mr. Lilly made a demand of Mr. Pepper for the amount of the debt due Mr. Lilly, say $1,500, with interest. This, I think, was made in New Orleans, in the spring of 1836, and J. Pepper assigned for reason why he should not pay, that he had no title to said section of land.

5th int. I went to Monroe, in this State, in company with Messrs. Dunlap and Pepper, and others, in July last. Gen'l Dunlap went particularly on business *forensic* from this cause, and to examine the records in the land office; and further this deponent saith not.

JOHN BRISCOE.

Personally appeared John Briscoe, in open court, who, on oath, says, that the foregoing answers to plaintiff's interrogatories are true, to the best of his knowledge and belief.

JOHN BRISCOE.

Sworn to and subscribed to before me, this 9th day of May, A. D. 1843.

A. R. POTTER, *Dept. Clk.*

Endorsed.

No. 127, John Briscoe's deposition.—H.

J. C. Whitford's affidavit.—I.

H. W. DUNLAP, curator of R. G. Dunlap,
vs. } No. 127.
JAMES PEPPER, et al.

Ninth district court, May term, 1843.

John C. Whitford, a witness on behalf of the plaintiff, being duly sworn, saith, that he was called on by the plaintiff to run the lines of the back lands to section 22, 23, 24, and 25, and the line between 22 and 23, all in township 16, of range 14 east; that in running the last mentioned line, he ascertained that the mill, gin, stables, and corn cribs are all on section 22. He believes, without having made an actual survey of the cleared land, that there are about three hundred and twenty acres cleared and in cultivation on said section 22, the cleared land not being quite three-quarters of a mile square. He considers that the land in section 52 and 53 *are* not worth five dollars per acre. He could not correctly ascertain the lines to lot No. 3 of section 54, in said township 16; he therefore did not run the same, as he had no field notes. There *is* three hundred ninety-seven acres and $\frac{17}{100}$ in section 53.

Cross-examined.

Says that he run the lines on three sides of section 22, in township 16, of range 14 east. On two sides he applied the chain and compass; but on the upper, or northeast side, he did not apply the chain, but used the compass only to find the corner. At the northwest corner of said section 22 he found a surveyor's mark on a hackberry tree, with letters J. J.; and on another hackberry tree, at the same corner, he found the surveyor's mark, with the letters and figures T. 16, R. 14, Sec. 22. All these marks had the appearance of considerable age.

JOHN C. WHITFORD.

In open court the above shall be read in evidence on the trial of the above entitled cause.

STOCKTON & STEELE and
JAMES PEPPER, *for defts.*
H. W. DUNLAP.

Endorsed.

No. 127. H. W. Dunlap, curator, &c., vs. James Pepper et al. J. C. Whitford's affidavit "J," filed May 10, 1843.

A. R. POTTER, *D'y Clk.*

Exhibit K.—See original.—(See page 107.)

Exhibit L.—A brief of titles.

State of Louisiana, parish of Concordia, ss:

Lot or fractional section No. 23, of township No. 16, range 14 east, in the land district north of Red river, La., was entered by Alvary Fisk, of Natchez, on the 23d of Nov., 1830. Fisk sold and *convey* the same to Moses Kirkindall and Cicero Jefferson, in January, 1832. Kirkindall reconveyed his moiety of said land to Hebert Washington, in the fall of the same year; and in January, 1833, Washington sold and conveyed the same to the said C. Jefferson.

Lots or fractional sections No. 24 and 25 of the township, range, and district aforesaid were entered by F. Y. & Y. C. Tompkins; lot 24, on the 1st of Nov., 1831; and lot 25, on the 2d day of November, 1832. And on the 15th of Jan., 1835, the same F. Y. & Y. C. Thompkins sold and conveyed the said lands to aforesaid C. Jefferson.

Mr. Jefferson continued the owner and proprietor of the lands aforesaid until his death, which took place on the sixth of July, 1835. And on the 15th of December, of the same year, Jesse B. Pepper, Sarah H. Evans, Maxwell D. Pepper, Louisa Pepper, and James Pepper, were recognised and decreed by the honorable the parish judge of the parish and State aforesaid, to be the legal heirs and representatives of the said C. Jefferson. The slaves offered are also a part of C. Jefferson's estate, as will appear by reference to the bill of sale.

The aforesaid heirs are all of the age of majority; they having accepted the succession of said estate without the benefit of inventory, and are now residing upon the above lands. The section lying in the rear of section No. 22 in the T. R & D. aforesaid, together with section fifty-three and lot three of section 54 of the same township, &c., were all entered by the subscribers in their own proper names. The section entered as a back concession has not yet been surveyed and approved; but the subscribers believed the title equally good as if the survey had actually been made and approved, inasmuch as the law granting back concessions prescribes the duty of the surveyor, and leaves with him no discretionary power where there are no conflicting claims, which is the case in this instance.

JAMES PEPPER, *Atty.*

Endorsed: A brief of titles. L.

Exhibit M.—Description of property, &c.

State of Louisiana, parish of Concordia, ss:

The lots or fractional sections No. 23, 24, and 25, in township 16, range 14 east, in the land district north of Red River, La., belonging to the subscriber of the parish and State aforesaid, contains 500 acres, 400 of which are arable and fit for cultivation, and well protected from all overflows by a good and sufficient levee. There is in cultivation 120 acres, and about 150 acres more that is cleared of cane and other undergrowth, the timber deadened, rails made, &c., &c; is intended to be planted the ensuing year. There is on the premises a gin and mill, a store-house, a number of negro cabins and overseer's house, and new framed dwelling-house just being finished. The section which we will designate as the back concession of section 22, of the township, range, and district aforesaid, contains 640 acres; section No. 53, and lots No. 3, of section No. 54 of the township, &c., aforesaid, contains in all 509 acres, and are situated immediately in the rear of lots 23, 24, and 25 aforesaid, and was reserved as back concession for the same, but not entered as such, in consequence of the register's office being vacant for some time before the 15th June, 1836, when the law expired; they therefore applied and entered the said lands immediately after the vacancy was filled, and obtained a receipt in the usual form. The last mentioned lands contain in all 1149 acres, several hundred of which were above the late high water of the present year, and all of said land was covered with valuable timber, consisting of ash, cypress, &c. The subscribers believe that lots No. 23, 24, and 25 are worth at the rate of 50 dollars per acre cash; and that the section entered as back concession of section 22, section 53, and lot 3 of section 54, are worth cash at the rate of eight dollars per acre. The slaves offered are a very likely set of hands, and acclimated from two to six years.

Lots 23, 24, and 25, containing 500 acres, at the rate of $50 per acre - - - - - - -	$25,000
Section in the rear of section 22, section 53, and lot 3 of section 54, containing 1149 acres, at eight dollars per acre -	9,192
The boys Jim, Manuel, Isam, Clem, Bob, Bie, Young, Jacob, and Nelson, 8, aged from 17 to 30, except Jim, aged 35, estimated at eleven hundred dollars cash each -	8,800
Henry, 15 years, and Old Jacob, 40 years, estimated at $700 and $500 - - - - - - - -	1,200
Milly, Henry, Rachel, Peg, Caroline, Sylvia, and Louisa, 7, aged from *aged from* 18 to 28, except Henry, aged 34, estimated at $700 each - - - - - -	4,900
Ailsy, aged 25, her children, Saul, aged 3 years, and Anthony, aged six months, estimated at 908 dollars. - - -	908
	$50,000

(Signed)

JAMES PEPPER.
SARAH H. EVANS,
MAXWELL D. PEPPER,
JESSE B. PEPPER,
LOUISA PEPPER,
By JAMES PEPPER,
Attorney for the above subscribers.

Endorsed.

Description of property, with an estimate of its value by the subscribers. M.

Exhibit N.

General Land Office, July 26th, 1842.

Sir: In reference to the subject matter to which you called the attention of this office, on the 25th inst., I have the honor to state, that, inasmuch as the private claim of James James, No. 115, heretofore located on section 22, township 16, range 14 east, in the district of land subject to sale at Ouachita, Louisiana, was improperly located on said section, and has been declared by this office void without respect, and instructions given to the surveyor general, on the 18th June last, to survey said section as public land, all locations, or entries of section 52, or any other land in the rear of said section 22, as a back concession under the act of 15th June, 1832, by virtue of the location of James James, as above stated, on section 22, *is also void and of no effect*. There is no evidence on file in this office that any entry has been made in the rear of section 22, by virtue of the location of said James on said section.. Should any such sale be returned to this office by the district land officers, the same will be regarded as illegal. Such entries will be cancelled, and the purchase money ordered to be refunded.

I am, sir, with much respect, your obedient servant,

THOS. H. BLAKE, *Commissioner*.

Hon. W. M. Gwinn, H. Rep. Endorsed N.

Exhibit O.

Land Office at Ouachita, La., 4th May, 1842.

To Sarah H. Evans, Maxwell D. Pepper, Jesse D. Pepper, Louisa Pepper, and James Pepper.

You will please to take notice that your entry, No. 3521 of lot No. 3, and section No. 53, in township No. 16, R. 14 east, containing $509\frac{35}{100}$ acres, is illegal, because it interferes with the back pre-emption right of Gibeon Gibson, he having made payment for said pre-emption on the 11th April, 1836. You are hereby notified to make application, (through this office,) to the Commissioner of the General Land office, for the re-payment of the purchase money paid for said entry, No. 3521.

We remain, most respectfully, your obedient servants,

Signed, HENRY O. McHENRY, *Register*.
H. HOLMES, *Receiver*.

Receiver's office, July 16th, 1842.

I certify the above to be a true copy of a notice sent from the land office, on the 4th May, 1842, to Sarah H. Evans, Maxwell D. Pepper, Jesse D. Pepper, Louisa Pepper, and James Pepper.

In witness whereof, I have hereunto subscribed my name.

H. HOLMES, *Receiver*.

Endorsed "O."

Exhibit P.

I agree to give R. G. Dunlap credit on his note, due the first of March last, for four thousand nine hundred dollars, for any money which he may pay to Reynolds, Marshall & Co., for which they hold an account against Cicero Jefferson estate.

Vicksburg, April 10th, 1838. JAMES PEPPER

Endorsed—Paper relative to James Pepper, P, No. 118, parish court.

Exhibit P.

Received from Gen'l R. G. Dunlap, the joint note of himself, H. W. Dunlap, for thirty-three hundred and thirty-eight $\frac{80}{100}$ dollars, ($3,338 $\frac{80}{100}$,) payable on the first January, 1839, in full satisfaction of our claim against the estate of Cicero Jefferson, deceased, being ($3,105 87) due on the 2d inst.

REYNOLDS, MARSHALL & CO.
Per CHAS. A. LACOSTE.

Natchez, April 27th, 1838.

Endorsed, Charles A. Lacoste, receipt for $3,105 87½, paid for James Pepper, P.

Exhibit Q.

Tuscumbia, La., Feb'y 8th, 1837.

General HUGH W. DUNLAP:

Dear Sir: I am desirous of getting the favour of you of acting as a trustee, the deed of trust being to secure the payment of ninety-six thousand dollars, payable by John Murrah to myself, but I am desirous of having some of the notes payable to my mother, and brother-in-law, which will be fully explained by a memorandum I have given to your brother, R. G. Dunlap. I will consider your compliance in this matter as a great favour, particularly as I am not much acquainted in that county. JAMES PEPPER.

Memorandum.

To George McCullough, on the first day of March, 1838,	$2,133 33⅓
To Sarah H. Evans, on same date, the same amount.	
To James Pepper, same date - - -	3,733 33⅓
Which, added together, make eight thousand dollars.	
To George McCullough, on the first day of every March, for the next five ensuing years - - - -	4,693 33⅓
To Sarah H. Evans, on the same dates, the same amounts as Dr. McCullough.	
To James Pepper, on the 1st day of every March, as above,	8,213 33½

Which sums, added together, make seventeen thousand six hundred dollars, per annual, for the last five years; and the total amount, ninety-six thousand dollars.

R. G. Dunlap will have the title of the six sections sold by me to Mr. John B. Murray, made to said Murrah, and take his notes, as above specified, with a deed of trust to secure the same, with thirty days' public notice before a sale under the deed, which shall be in lieu of a deed from said Dunlap to said Pepper for said land.

Feb. 8th, 1837. JAMES PEPPER.

Reply, E. Dunlap.

Endorsed, memorandum for taking the notes of John B. Murrah, for James Pepper and others, "Q."

Letter endorsed. Mr. Jas. Pepper's letter relative to the Yazoo lands, sold to Mr. Murrah, General Hugh W. Dunlap, Clinton, Mississippi.

Exhibit R.—Answer of H. W. Dunlap.

State of Louisiana, parish of Madison:

JOSEPH M. LOONY }
vs. } No. 526.
HUGH W. DUNLAP. }

November term, 1842, of the district court.

The defendant, Hugh W. Dunlap, comes into court, and, for answer to the allegations in the plaintiff's petition, denies all and singular the allegations therein contained, and insists that the plaintiff shall be held in strict proof of the same. The defendant, for further answer, avers, that he bona fide purchased the property described in the plaintiff's petition, from one Richard G. Dunlap, who is now dead, and that this defendant is the curator of said R. G. Dunlap, deceased; that said purchase was made by authentic act, with general warrantee, and subrogating this defendant to all the warranties of said R. G. Dunlap; that said authentic act has been duly recorded in the office of the parish judge of the parish of Madison. This defendant further avers, that his vendor, R. G. Dunlap, purchased said property by authentic act, with general warranty, which has also been duly recorded in the parish judge's office for the parish of Madison, from Mrs. Sarah H. Evans, George McCullough, and his wife, Louisa, who are now citizens of the State of Missouri, and one James Pepper, who is a citizen of the parish of Madison, aforesaid. This defendant prays that Mrs. Sarah H. Evans, George McCullough, and wife, his wife, Louisa, and James Pepper, be cited in warranty, and be made parties hereto, and cited to defend this suit. He also prays that a curator ad hoc be appointed, to represent Mrs. Sarah H. Evans, George McCullough, and his wife, Louisa McCullough, as absentees.

The defendant prays, that if the plaintiff recover of him the property sued for, or any part thereof, that he recover, and have judgment against the said Mrs. Sarah H. Evans, George McCullough and his wife Louisa, and James Pepper, in solido, for the sum paid by said R. G. Dunlap for said property, that being fifty dollars per acre for the land, and one thousand dollars apiece for the negroes. The defendant prays for the further sum of three thousand dollars, for money expended him in making necessary improvements on said land sued for; and the defendant prays to be hence dismissed, with his reasonable costs in this behalf most wrongfully expended.

H. W. DUNLAP.

Endorsed.

No. 526. Joseph M. Loony vs. H. W. Dunlap; answer of H. W. Dunlap filed November 26, 1842.

J. W. COUCH, *Dy. clerk.*

See J. M. Loony's petition, 34 page.

R. Citation to H. W. Dunlap. R.

The State of Louisiana, ninth judicial district court, parish of Madison:

JOSEPH M. LOONY }
vs. } No. 526.
H. W. DUNLAP. }

To H. W. Dunlap, residing in the said parish of Madison:

You are hereby summoned, cited, either to comply with the demand contained in the petition of the said Joseph M. Loony, of which a copy accompanies this citation, or to deliver your answer to said petition at the office of the clerk of said court, held in the town of Richmond, in said parish, within thirteen days after service hereof.

Witness the honorable Thomas Curry, judge of said court. Signed, sealed, and delivered, this 9th day of June, 1842.

[SEAL.] JOHN T. MASON,
Clerk of said court.
By J. W. COUCH, *Dy. clerk.*

Return.

Received June 9th, 1842, and served on the 15th day of the same month, by handing a certified copy of this citation, and of the petition, in person, to H. W. Dunlap, at his domicil, in the parish of Madison, Louisiana, June 16th, 1842.

L. H. BRYAN, *Dep. sheriff.*

Service 2 50, mileage 2 50.

Endorsed.

526. Madison district court, citation to H. W. Dunlap; filed June 16th, 1842.

J. W. COUCH, *Dy. clerk.*

Certificate of mortgages. "S."

State of Louisiana, parish of Concordia, ss:

I, George W. Keeton, judge, and ex-officio recorder of mortgages in and for the said parish, do hereby certify, that there does not exist any mortgage of record in my office against the property of the late Cicero Jefferson, dec'd, except the following, viz: a certain mortgage executed by the said Cicero Jefferson, dec'd, on the tenth day of June, A.D. eighteen hundred and thirty-five, in favor of James M. Reynolds, John B. Bryne, Louis F. Herman, and Levin R. Marshall, merchants, trading under the name, firm, and style, of Reynolds, Marshall & Co., in the city of Natchez, upon the following described property, viz: a certain tract of land and plantation containing eleven hundred and forty acres, situated in this parish, on the river Mississippi, about eight miles above the town of Vicksburg, being composed of lots Nos. twenty-one, twenty-three, twenty-four, and twenty-five, in township number sixteen, and range number fourteen east, in the land district north of Red river; together with all the improvements, buildings, rights, privileges, and appurtenances thereunto belonging, or in anywise appertaining. Also the following mentioned and described negroes, slaves for life, settled and employed upon the said plantation, being twenty-one in number, viz: Manuel, aged 26 years; Jim, aged 35 years; Anthony, aged 38 years; Isam, aged 24 years; Old Jacob, aged 40 years; Young Jacob, aged 18 years; Nelson, aged 18 years; Clem, aged 17 years; Bob, aged 16 years, Henry, aged 14 years; Sie, aged 18 years; Daniel, aged 21 years—all males; Milly, aged 30 years; Peggy, aged 24 years; Hurry, aged 28 years; Nilsy, aged twenty-five years; Caroline, aged 17 years; Rachel, aged 17 years; Sylva, aged 17 years; Cety, aged 15 years; and Louisa, aged 18 years, all females, to secure the said firm in their endorsements and acceptances to the amount of eight thousand six hundred and eighty-three 32-100 dollars, and also for any other endorsements, acceptances, and advances, which the said firm may have made to the said Cicero Jefferson, deceased.

Given under my hand, and the seal of my office, at Vidalia, this 23d day of July, A. D. 1836.

[L. S.]

G. W. KEETON, *P. judge*.

Endorsed—" S."

Exhibit U.—Answers of James Pepper.

JAMES PEPPER
vs.
R. G. DUNLAP.
} 127.

James Pepper, in answer to interrogatories propounded, answers as follows:

To interrogatory 1st James Pepper answers, that he informed R. G. Dunlap that himself and two brothers, who were then deceased, and his mother and sister, had subscribed for bank stock in the Citizen's Bank of Louisiana to the amount of fifty thousand dollars.

Interrogatory 2d. James Pepper answers, that he never had any communication with the bank on the subject after the contract, except giving R. G. Dunlap an order for the title papers; which order was given about the first of March, 1837. That he had not the residence required by the board of directors of the bank for owning stock in the bank; that all the parties had lived less than twelve months in the State at the time of this contract, except himself. James Pepper says also, that the attornies for the bank required the parties to make an affidavit that they had lived in the State twelve months, and they refused to do it. Witness states that, at the time the oath was required, he had lived less than twelve months in the State. Witness answers, that he communicated with R. G. Dunlap on the subject afterwards, and that he appeared to be satisfied that the parties were not entitled to the stock, and did not insist on their taking it.

Interrogatory 3d. This is answered in interrogatory second. Witness says they used no exertion to procure the stock, in consequence of ascertaining they were not entitled to it.

Interrogatory 4th. Witness answers he did not intentionally neglect to receive the stock; and if the parties had been able to procure it they would have done so.

Interrogatory 5th. Witness answers, yes.

Interrogatory 6th. Answers yes.

Interrogatory 7th. She is dead, and died in 1835, in August or September. Witness answers, that the time that R. G. Dunlap expressed himself satisfied about the bank stock, was when A. J. Loury was passing the act of sale.

JAMES PEPPER.

Signed, sworn to before me, in open court, this 16th May, A. D. 1843.

JOHN T. MASON, *Clerk*.

Endorsed.

127. 9th district court, James Pepper et al. vs. R. G. Dunlap; answers of James Pepper, U, filed 16th May, 1843.

JOHN T. MASON, *Clerk*.

Exhibit T.

Public sale of lands at the land office, Ouachita, Louisiana.

Pursuant to instructions from the Commissioner of the General Land Office, we will offer for sale, on the first Monday of March next, to the highest bidder, at this office, the lots Nos. 1, 2, 3, and 4, being section number 52, township number 16 north, of range number 14 east, containing $655\frac{35}{100}$ acres. This tract of land is represented as being very valuable, and situated only one mile and half back from the Mississippi river, it being the same land that was improperly located as a back concession to section 22, (fronting on said river, and nearly opposite the mouth of Yazoo river,) in same township and range, and which was erroneously surveyed as the private claim of James James.

HENRY O. McHENRY, *Register*.

Land office at Ouachita, La., January 16, 1843.

H. HOLMES, *Receiver*.

Land office at Ouachita, La., January 16th, 1843.

SIR:—You will please publish in your paper the annexed advertisement thirty days, or five times in succession, if your paper is a weekly one, and forward your account to the receiver in duplicate for payment; also, copy of the advertisement annexed.

The receiver has requested me to state to you, that he would prefer your authorizing some person here to collect the amount, and to be authorized also to sign in duplicate for the same.

I remain, sir, most respectfully, your obt. servt.

HENRY O. McHENRY, *Register*.

JAMES M. DOWNES, ESQ.,
Editor Richmond Compiler, Madison parish, La.

Endorsed.

James M. Downes, esq., Editor Richmond Compiler, Richmond, Madison parish, La.; T, land office, Ouachita, recd. Jany. 19th.

Exhibit W.—Commission.

State of Louisiana, parish of Madison:

To the parish judge, or any justice of the peace residing in Opelousas, La., greeting:

Know ye, that reposing special trust and confidence in your prudence, knowledge, and fidelity, you are hereby nominated and appointed, and by these presents invested with full power and authority, to cause to come before you the register of the land office at Opelousas, Louisiana, and him diligently to examine, on his oath or affirmation, touching his knowledge in a certain matter of controversy, now pending in the district court of the State of Louisiana, in and for the parish of Madison aforesaid, wherein James Pepper and al. are plaintiffs, and Richard G. Dunlap is defendant, which said examination, so taken, is to be read in evidence on the trial of said cause, and which you will also send closed under your hand and seal, directed to the clerk of said court of the parish of Madison, with all due speed, together with this commission, on or before the third Monday in May next. Witness the honorable B. G. Taney, judge of said court, this 29th day of April, 1841.

JOHN T. MASON, *Clerk*.
By E. CAVILEER, [SEAL.]
Deputy clerk.

The execution of this commission will be seen by the testimony of Gabriel A. Briant, taken before me, and hereunto annexed, and returned herewith.

GUY H. BELL,
Justice of the peace for the parish of St. Landry.

Opelousas, 14th May, 1841.

Interrogatory 1st. To the register of the land office at Opelousas, in the State of Louisiana. Has the donation claim of James James to 640 acres of land, lying in township 16, range 15 E., including the mouth of James bayou, and designated as section 22, in said township, been confirmed by the commissioners appointed to adjudicate such claims, or has Congress ever confirmed the same?

Interrogatory 2d. By the same. Has James James any donation claim or claims confirmed to him in the vicinity of Vicksburg, (or the Walnut hills?) If so, state what claim or claims has been confirmed, where they lie, and what quantity of land the claim or claims contain.

Interrogatory 3d. By the same. What proof did James James, or any other person, make, before the commissioners, for the purpose of showing he was entitled to a donation claim or claims, in township 15 and 16, range 15 east? You will set out a copy of the proof in each case, as on file in your office.

State of Louisiana, parish of Madison:

Ninth district court.

I do hereby certify the foregoing to be a true copy of the original interrogatories on file in this office. Witness my signature, and impress of the seal of said court, this 24th day of April, 1841.

[SEAL.] JOHN T. MASON, *Clerk.*
By E. CAVILEER, *Dpy. clk.*

Endorsed.

The answers to the interrogatories will be seen by the testimony of Gabriel A. Briant, hereunto annexed, and returned herewith. Opelousas, 14th May, 1841.

GUY H. BELL,
Justice of the peace for the parish of St. Landry.

Answers.

JAMES PEPPER et al.
vs. } No.
RICHARD G. DUNLAP.

9th district court, parish of Madison.

Gabriel A. Briant, being duly sworn to declare the truth, in answer to the question put to him in the above entitled cause, deposeth and saith: In answer to the first interrogatory, that he is the register of the land office at Opelousas, State of Louisiana; that he has been unable to find in his office any claim of James James to 640 acres of land, lying in township 16, range 15 east, including the mouth of James bayou, and designated as section 22, in said township.

In answer to the second interrogatory, he answers, that Vicksburg is not in the district of lands for which he is register.

In answer to the third interrogatory, he refers to the annexed copies of report of Concordia claims, No. 114, 115, 116, and 117; and copies of plats of survey, certified by him, and hereunto annexed.

G. A. BRIANT, *Register.*

Sworn to and subscribed at Opelousas, the 15th day of May, A. D 1841.

Before me, GUY H. BELL,
Justice of the peace for the parish of St. Landry.

State of Louisiana, parish of St. Landry:

I, Guy H. Bell, justice of the peace in and for the parish of St. Landry, and residing in the town of Opelousas, do certify, that by virtue of a commission issued out of the 9th district court for the parish of Madison, in the above entitled cause, under date of the 29th April, 1841, hereunto annexed, and returned herewith, I took the foregoing testimony of Gabriel A. Briant, was taken before me, was reduced to writing by me, in the words as written, and was signed by the said witness, at the time and in the manner it purports to have been taken, written, and signed. The copies referred to in the answer to the 3 interrogatory, I have hereunto annexed, and return the same, together with the commission, closed up and directed as in said. commission is specified. In testimony whereof I have hereunto signed at Opelousas, this 14th day of May, 1841.

GUY H. BELL,
Justice of the peace for the parish of St. Landry.

Fees $1.

Certificate of notice.

To the Register of the Land Office:

James James claims $639\frac{82}{100}$ acres of land, represented by the annexed plat, by settlement made agreeably to the laws, customs, and usages of French and Spanish Government, and provided for by the fourth section of an act of Congress, entitled an act respecting claims to lands in the territories of Orleans and Louisiana, passed the 3d March, 1807.

Signed, JAMES JAMES.

E, No. 352.—E, No. 103. Register's No. E. The plats filed in these two claims shew them to be for the same claim or tract of land.

Reported Nos., 116 and 117.—One entered with the register at Opelousas, the other with the deputy register at Rapides; neither case has any evidence adduced.

Certificate of notice.

To the Register of the Land Office:

James James claims 433 & 59 acres of land, as represented by the within plat, by virtue of a settlement made thereon, prior to the 20th December, 1803. The claimant actually inhabited and cultivated the same, prior and on the 20th Dec., 1803, and now occupies the same. He claims no other land by virtue of any French or Spanish grant, or order of survey; he therefore prays to be confirmed in the same, agreeably to the acts of Congress.

Signed, JAMES JAMES.

Reported, No. 115.—*B. Register, No.* 74.

Reported, No. 115. A plat of survey is filed with the notice of this claim. Jacob Herfman, a witness before the board, the 16th Sept., 1809, hath deposed as follows, to wit: that James settled on the tract claimed in the spring of the year 1802, where he has continued to reside and cultivate the same every year since; that, on the 20th day of December, 1803, the claimant was over the age of 21 years, and the head of a family, and an inhabitant of Louisiana. The deposition of Charles

Collins, taken by William Lindsey, judge of the parish of Warren, in Concordia, commissioned by the board for that purpose, is to the following report, to wit: That about the month of April, 1803, the deponent heard Joseph Vidal grant permission to the claimant to settle on the land in question. No other document or proof is adduced.

Certificate of Notice—No. 114.

James James claims 433 acres of land, on the waters of the Mississippi, by virtue of . Given under my hand for the claimant, this 30th day of June, 1808.

(Signed) CHARLES LAUSON.

E. report, No. 114. A plat of survey, by Henry Cassiday, dated 10th December, 1807, is the only document filed in this claim; no evidence is adduced to establish occupancy, &c.

Claims reported in Concordia.

Concordia Claims—No. 114, 115, 116, and 117.

Land Office, Opelousas, Louisiana,
May 5th, 1841.

I do hereby certify the foregoing notices of the claims of James James to be correct copies of the originals of record and on file in my office; and I do further certify, that pursuant to the eight section of an act of Congress, entitled an act respecting claims to lands in the territory of Orleans and Louisiana, approved the 3d March, 1807, the commissioner appointed for the purpose of ascertaining and adjusting titles and claims to lands in the western district of the territory of Orleans, now State of Louisiana, in their report of claims for the county of Concordia, on the 16th of October, 1812, to the honorable Albert Gallatin, Secretary of the Treasury of the United States, recommended for confirmation, in favor of James James, a tract of land in the county of Concordia, on the waters of the Mississippi, containing 433 $\frac{59}{100}$ acres, and numbered, in the reports of said commissioners 115, which claim was confirmed by act of Congress, approved 29th of April, 1816. I do further certify, that the claim numbered 116 was rejected by the aforesaid Board of Commissioners for want of testimony, and has never been confirmed, and that No. 114 and 117 are duplicates of claims numbered 115 and 116, which were deposited with deputy register at Concordia.

In virtue of which, I hereunto set my hand and private seal of office, this 15th day of May, A. D. one thousand eight hundred and forty-one. Fees, $10.

G. A. BRIANT, *Register*. [SEAL.]

Referred to and annexed to the deposition of G. A. Briant, in the case of James Pepper and al. vs. Richard G. Dunlap, 9th district court, parish of Madison.

Attest: GUY H. BELL,
Justice of the peace for the Ph. St. Landry.

Plats of survey referred to—See original.

Endorsed: 127. James Pepper et al. vs. Richard G. Dunlap. Commission "W."

Exhibit X—(Patent to C. B. McKiernan.)

Pre-emption certificate, No. 7,688.

The United States of America, to all to whom these presents shall come, greeting:

Whereas, Charles B. McKiernan, of Madison, Louisiana, has deposited in the General Land Office of the United States, a certificate of the register of the land office at Ouachita, whereby it appears that full payment has been made by the said Charles B. McKiernan, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "an act making further provision for the sale of the public lands," for lot No. three of section 22, in township 16 north, of range fourteen east, in the district of lands subject to sale at Ouachita, Louisiana, containing one hundred and sixty acres and seventy-nine hundredths of an acre, according to the official plat of the survey of said lands, returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Charles B. McKiernan. Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress, in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Charles B. McKiernan, and to his heirs, the said tract above described. To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Charles B. McKiernan, and to his heirs and assigns forever.

In testimony whereof, I, John Tyler, President of the United States of America, have caused this letter to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the fourth day of February, in the year of our Lord one thousand eight hundred and forty-three, and of the independence of the United States the sixty-seventh.

By the President: JOHN TYLER.
[SEAL.] By R. TYLER, *Sec'y.*
Recorded, vol. 13, page 350. J. WILLIAMSON,
Recorder of the General Land Office.

Endorsed: X.

Exhibit Y—Patent to W. A. Greisham.

Pre-emption certificate, No. 7,687.

The United States of America, to all to whom these presents shall come, greeting:

Whereas, Walter A. Greisham, of Madison county, Louisiana, has deposited in the General Land Office of the United States, a certificate of the register of the land office at Ouachita, whereby it appears that full payment has been made by the said Walter A. Greisham, according to the provisions of the act of Congress, of the 24th of April, 1820, entitled "an act making further provision for the sale of the public lands," for lot No. 4, of section No. 22, in township sixteen north, of range fourteen east, in the district of lands subject to sale at Ouachita, Louisiana, containing one hundred and fifty-three acres, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Walter A. Greisham. Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Walter A. Greisham, and to his heirs, the said tract above described. To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Walter A. Greisham, and to his heirs and assigns forever.

In testimony whereof, I, John Tyler, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the fourth day of February, in the year of our Lord one thousand eight hundred and forty-three, and the independence of the United States the sixty-seventh.

By the President: JOHN TYLER.
By R. TYLER, *Sec'y*. [SEAL.]

Recorded, vol. 13, page 351. J. WILLIAMSON,
Recorder of the General Land Office.

Endorsed: "Y."

Exhibit Z—Patent to Bartlett.

Pre-emption certificate, No. 7,686.

The United States of America, to all to whom these presents shall come, greeting:

Whereas, John Bartlett, of Madison, Louisiana, has deposited in the General Land Office of the United States, a certificate of the register of the land office at Ouachita, whereby it appears that full payment has been made by the said John Bartlett, according to the provisions of the act of Congress, of the 24th of April, 1820, entitled "an act making further provision for the sale of the public lands," for lot No. 2, of section 22, in township 16 north, of range 14 east, in the district of lands subject to sale at Ouachita, Louisiana, containing one hundred and sixty-one acres and fifty-eight hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the surveyor general, which said tract has been purchased by the said John Bartlett. Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said John Bartlett, and to his heirs, the said tract above described. To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said John Bartlett, and to his heirs and assigns forever.

In testimony whereof, I, John Tyler, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed. Given under my hand, at the city of Washington, the fourth day of February, in the year of our Lord one thousand eight hundred and forty-three, and of the independence of the United States the sixty-seventh.

JOHN TYLER.

By the President: By R. TYLER, [SEAL.]

Secretary.

Recorded vol. 13, page 349.

J. WILLIAMSON,

Recorder of the General Land Office.

Endorsed, "Z."

Exhibit A A.—R. W. Burney's patent.

Pre-emption certificate, No. 7,699.

The United States of America, to all to whom these presents shall come, greeting:

Whereas, Robert W. Burney, of Madison, Louisiana, has deposited in the General Land Office of the United States a certificate of the register of the land office at Ouachita, whereby it appears that full payment has been made by the said Robert W. Burney, according to the provisions of the act of Congress of the 24th April, 1820, entitled "an act making further provision for the sale of the public lands," for lot No. one, of section 22, in township 16 north, of range 14 east, in the district of lands subject to sale at Ouachita, Louisiana, containing one hundred and sixty-seven and fifty-seven hundredths of an acre, according to the official plat survey of the said land returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Robert W. Burney. Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Robert W. Burney, and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said Robert W. Burney, and to his heirs and assigns forever.

In testimony whereof, I, John Tyler, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the fourth day of February, in the year of our Lord one thousand eight hundred and forty-three, and of the independence of the United States the sixty-seventh.

JOHN TYLER.

By the President: By R. TYLER, [SEAL.]

Secretary.

Recorded, vol. 13, page 352.

J. WILLIAMSON,

Recorder of the General Land Office.

Endorsed, "A A."

Exhibit No. 1.—Conveyance from A. Lilly to C. Jefferson.

This indenture, made this twenty-eighth day of July, in the year of our Lord one thousand eight hundred and thirty-one, between Aaron Lilly, of the parish of Concordia, and State of Louisiana, of the first part, and Cicero Jefferson, of the county of Jefferson, and State of Mississippi, of the second part, witnesseth: That the said Aaron Lilly, for and in consideration of the sum of one thousand and nine hundred dollars, to him in hand paid at the time of sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, and confirmed, by these presents doth grant, bargain, sell, alien, enfeoff, and confirm, unto the said Cicero Jefferson, a certain tract or parcel of land, lying and being in the parish and State of Louisiana aforesaid, on the west bank of the river Mississippi, being section twenty-second, in township No. 16, of range No. 14 east, containing six hundred and forty acres, more or less, being a donation claim to James James, deceased, together with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise thereunto appertaining, with all the estate, right, title, interest, claim, or demand, of him, the said Aaron Lilly, of, in, and to the same, both in law and equity, and to every part, portion, and parcel thereof; and the said Aaron Lilly, for himself and all persons claiming under him, and against all claim or claims hereafter to be made or set up by the legal heirs of the said James James, or any person or persons claiming under them, the before granted premises and land, with the appurtenances, to the said C. Jefferson, his heirs and assigns, will forever warrant and by these presents defend. To have and to hold, to the said C. Jefferson, and to his heirs and assigns, to and for the sole and only proper use, benefit, and behalf of the said C. Jefferson, his heirs and assigns, the above granted premises and land, forever.

In witness whereof, the said Aaron Lilly, party of the first part, hath hereunto set his hand and affixed his seal, the day and year first above written.

AARON LILLY. [SEAL.]

In presence of—

George Balph,
Benjamin Jones.

State of Louisiana, parish of Concordia, ss:

Be it remembered, that on this 3d day of March, A. D. eighteen hundred and thirty-five, before me, George S. Guion, judge and ex officio notary public in and for the said parish, personally came and appeared Aaron Lilly, of this parish, who declared and acknowledged that he signed, sealed, and delivered the foregoing instrument of writing, as for his act and deed, the day and year therein mentioned, for the uses and purposes therein expressed.

In testimony whereof, I have hereunto set my hand and the seal of my office, at Vidalia, the day and year above written.

GEORGE S. GUION, *P. Judge.*

State of Louisiana, parish of Concordia, ss:

I certify, that the within instrument of writing is duly recorded in my office, in book G, at pages 173 and 174.

In testimony whereof, I have hereunto set my hand, and the seal of my office, at Vidalia, the 3d day of March, 1835.

GEORGE S. GUION, *P. judge.*

(*Endorsed.*)—Aaron Lilly; conveyance to Cicero Jefferson, "No. 1;" filed for record 3d March, 1835.

GEORGE S. GUION, *P. judge.*

Jefferson's bond to Lilly.—2.

Know all men by these presents, that I, C. Jefferson, of Jefferson county, and State of Mississippi, *are* held and firmly bound unto A. Lilly, of the parish of Concordia, State of Louisiana, in the sum of fifteen hundred dollars, lawful money of the United States, to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with my seal and signed this 28th day of July, A. D. 1831.

This obligation is conditional, as follows:

Whereas, the above bound C. Jefferson has this day purchased of the abovenamed Aaron Lilly a tract of land, called the James donation, being section No. 22, in township No. 16, range 14 east, situated on the west bank of the river Mississippi, the above sum of fifteen hundred dollars being a part of the purchase money.

Now, if the said donation title to James James, deceased, should be a good *bona fide* and valid title to said tract of land, and enable said Jefferson to hold the same against the United States, and all persons claiming under the same; or if Congress, by an act passed for that purpose, in consideration of James James' rights, as a donee, having been lost through ignorance or inattention, and said Jefferson should thereby acquire a valid title to said land; then, in either event of his obtaining said title, either of donation and confirmation, or by such act of Congress, so soon as either is ascertained, the above mentioned sum is to be due and payable to said Aaron Lilly, and not till then. Should neither of said events take place, this bond to be void, otherwise to remain in full force and virtue.

Witness my hand and seal, the day and year above written.

C. JEFFERSON. [SEAL.]

Teste: BENJAMIN JONES.

Endorsed.

Received of the heirs of C. Jefferson a note drawn by Richard G. Dunlap, and endorsed by David M. Porter and William F. Smith, which I take for seventeen hundred and sixty dollars, as a full consideration of the within bond.

AARON LILLY.

March 2d, 1837.

Attest: R. G. DUNLAP.

"2." C. Jefferson bond to Aaron Lilly.

No. 3.

Know all men by these presents, that whereas James Pepper, of the parish of Concordia, and State of Louisiana, had, on the 20th of December, 1836, bargained and sold to Richard G. Dunlap the plantation, negroes, &c., on which he then lived; and in said articles it was agreed that he was to receive lands in Mississippi, at twenty dollars per acre, to the amount of fifty-seven thousand and six hundred dollars, references being had to said articles for the character and description of said land; and whereas the said Dunlap offer said Pepper six sections of lands at the same price, and the amount over the $57,600, the said Pepper agrees to take the same, and discount nineteen thousand and two hundred dollars, in equal amounts, from the last five payments, as specified in the first contracts. And the said Dunlap warrants that there is not more than one section and a half of the said six sections subject to overflow. The same lies in Washington county, Mississippi, as supposed; four sections, No. 5, 6, 7, 8, in township 13, range 3, west; and two sections, 31 and 32, in township 14, and same range, and all in the Clinton district, when entered. Now, be it understood, that if there should be a greater portion of said six sections subject to overflow than herein agreed on, the said Dunlap is to give said Pepper one section and a half of good cotton lands, in the State of Mississippi, within the cotton region, with not more than one-fourth of the same subject to overflow; and the other four sections and a half to stand under the first agreement. It is agreed that said Pepper shall retain Emanuel and his wife Milly, and deduct twenty-six hundred dollars from the next year's payment for them.

Witness our hands and seals, January 18th, 1837.

R. G. DUNLAP, [SEAL.]
JAMES PEPPER. [SEAL.]

Attest: JOHN M. ANDERSON.

State of Louisiana, parish of Concordia:

We, George McCullough, Louisa McCullough, and Sarah H. Evans, who are jointly interested with said Pepper in the property to which the within agreement appertains, do hereby bind ourselves, our heirs, administrators, executors, and assigns, to ratify and confirm the same. Given under our hands and seals this 18th day of January, in the year 1837.

GEORGE McCULLOUGH, [SEAL.]
LOUISA McCULLOUGH, [SEAL.]
SARAH H. EVANS. [SEAL.]

No. 4. No. 3,426. (Duplicate.)

Land Office at Ouachita, 30th May, 1836.

Received from Jesse Pepper, Maxwell D. Pepper, James Pepper, Louisa Pepper, and Sarah H. Evans, of Concordia, La., heirs and legal representatives of Cicero Jefferson, deceased, the sum of eight hundred dollars, for a tract of land situated in the rear of and adjacent to the tract belonging to them, fronting on the Mississippi river, in the district of land north of Red river, La., designated as section numbered 22, in township numbered 16, of range numbered 14 east, containing six hundred and forty acres; the said rear tract being estimated to contain the like quantity of six hundred and forty acres, but not yet surveyed and approved by the surveyor general.

$800 00. Left to pay the surveying, $20.

RAN. EASTIN, *Receiver*.

Endorsed.

127. "4." Filed December 2d, 1842.

JOHN T. MASON, *Cl'k*.

No. 5.

Land Office at Ouachita, La., 15th July, 1836.

(Duplicate.) No. 3,521. Received from Sarah H. Evans, Maxwell D. Pepper, Jesse B. Pepper, Louisa Pepper, and James Pepper, of Concordia, La., the sum of six hundred and thirty-six dollars and sixty-nine cents, being in full payment for the lot No. 3, of section No. 54, and the whole of section 53, in township No. 16, of range No. 14 east, containing five hundred and nine $\frac{35}{100}$ acres, at $1 25 per acre.

$636 69. RAN. EASTIN, *Receiver*.

Endorsed.

127. Filed 2 December, 1842.

JOHN T. MASON, *Cl'k*.

No. 6. *Copy of inventory*.

State of Louisiana, parish of Concordia, ss:

Be it remembered, that on this seventeenth day of September, A. D. eighteen hundred and thirty-five, I, George S. Guion, judge of the said parish, proceeded, at the late residence of Cicero Jefferson, deceased, in this parish, to take an inventory, and to cause an appraisement to be made of all the property within this parish, immoveable and moveable, belonging to the succession of the said deceased; and having appointed Aaron Lilly and Fielding Faut, freeholders and residents of this parish, appraisers, who were sworn as the law directs, and being attended by B. G. Tenny, esq., of this parish, appointed counsel for the absent heirs of the said deceased. The following is a full and complete inventory of all and singular the said estate, as far as the same was shown to me, or otherwise came to my knowledge, together with the appraisement thereof, as made by the said appraisers, viz:

A tract of land and plantation, containing one thousand and ninety-eight acres, situate in this parish, on the river Mississippi, about nine miles above Vicksburg, being lots numbered 22, 23, 24, and 25, in township No. 16, of range No. 14, east, in the district of lands north of Red river, appraised at thirty-five dollars per acre	$38,430 00
Negro slaves for life, settled and employed upon the said plantation, viz:	
Manuel, a man, aged 22 years, valued at	900 00
Milly, a woman, wife of Manuel, aged 25 years, valued at	650 00
Isam, a man, aged 25 years, valued at	800 00
Daniel, a man, aged 23 years, valued at	800 00
Sibby, a woman, wife of Daniel, aged 18 years, valued at	650 00
Anthony, a man, aged 35 years, valued at	700 00
Ailsey, a woman, wife of Anthony, aged 35 years, and her child, Solomon, aged 2 years, valued	800 00
Jim, a man, aged 40 years, a	700 00
Jacob, " " 50 " a (sickly)	300 00
Nelson, " " 20 " a	800 00
Cyrus, " " 18 " a	750 00
Jacob, " " 20 " a	800 00
Peggy, a woman, aged 20 years, valued at	500 00
Henny, " " 43 "	550 00
Louisa, " " 22 " (sickly)	300 00
Caroline, " " 16 "	500 00
Rachel, " " 18 "	500 00
Clem, a boy, " 15 "	550 00
Bob, " " 13 "	550 00
Henry, " " 12 "	450 00
The crop of cotton now in the field on the above mentioned plantation	3,600 00
50 head of hogs	100 00
One yoke of oxen	60 00
50 head of stock cattle	300 00
One horse called Rulbuck	100 00
One sorrel horse	75 00
One " "	60 00
One bay "	75 00
One brown "	40 00
4 single horse ploughs	10 00
2 ploughs	5 00
16 weeding hoes	4 00
7 axes, $7, 7 spades, $5	12 00
4 prs. hames, 4 collars, and 4 pr. traces, chains, and single and double trees	5 00
One grind stone	3 00
One hand saw, 25 cts., 1 log chain, $2	2 25
1 2-inch auger, 37½ cts., 1 ½-inch auger, 25 c.	62½
1 iron square, 50 cts., 2 hand axes, $1	1 50
5 cane knives, $3 87½, 1 chisel, 50 c.	4 37½
One hand saw, 75 c., 1 curry comb and old chain, 50 c.	1 25
One whip saw, $5, 1 small jar, 50 c.	5 50
One churn, 1 pitcher, 1 coffee pot, 1 sugar bowl, and 2 salt cellers	3 00

Copy of Inventory—*Continued.*

1 cot bedstead and 1 small mattrass	$3 50
1 musquito bar, 2 cotton sheets, and 3 blankets	5 00
3 linen sheets, $6, 2 pr. cotton draws, $2	8 00
3 prs. of pumps, $1, one money belt, $1	2 00
1 cloth brush, 50, 1 towel, 25 c.	75
1 white cravat, 50 c., one hair brush, 25 c.	75
5 linen collars, $2 50, 2 white stocks, $1	3 50
1 linen shirt bosom, $1, 2 pr. suspenders, 75 c.	1 75
2 prs. silk socks, $1, 2 prs. cotton do., 50 c.	1 50
1 hat, $6, 2 pr. boots, $4, 1 trunk, $2	12 00
1 pocket book, 50 c., 2 cotton table cloths, 50 c.	1 00
1 great coat $20, 1 blue dress coat, $15	35 00
1 black dress coat, $20, 1 green frock coat, $8	28 00
1 pr. new black pantaloons, $10	10 00
1 pr. Bombazine pantaloons	3 00
1 linen coat, $3, 2 vests, $2	5 00
6 Windsor chairs	4 50
1 pot, 1 oven, and two water buckets	3 00
1 shot gun, $15, 1 shoe hammer, 50 c.	15 50
1 set of razors and straps	3 00
1 French grammar, $1, and Telemachus, 50 c.	1 50
1 small French book	50
Mrs. Butler's journal	1 00

RECAPITULATION.

Amount of appraisement on the first page	$40,780 00
Amount of appraisement on the 2d page	13,649 00
Amount of appraisement on the 3d page	168 25
	$54,597 25

And having completed the inventory of the said estate, the appraisement of which amounts, in the whole, to the sum of fifty-four thousand five hundred and ninety-seven dollars and twenty-five cents, I have closed this process verbal the day and year, and at the place aforesaid, and have caused the said appraisers, and the said counsel of absent heirs, to sign the same in presence of Jesse B. Pepper and Young Burke, competent witnesses residing in this parish, who have also signed with them and me the said parish judge.

Signed,
AARON LILLY,
F. FAUT,
B. G. TENNY,
J. B. PEPPER,
YOUNG BURKE.
GEORGE S. GUION, *P. judge.*

State of Louisiana, parish of Madison:

I, Richard Charles Downs, parish judge in and for said parish, do hereby certify, that the foregoing is a true copy of the original inventory on file in my office. Witness my signature, and the impress of my official seal, this 10th day of May, A. D. 1841.

RICH'D CHA'S DOWNES, [SEAL.]
Parish judge.

Endorsed. Est. of Cic. Jefferson, dec'd. Inventory. Copy. "6."

No. 7.—*Inventory of the property of R. G. Dunlap.*

State of Louisiana, parish of Madison:

On this sixth day of June, A. D. eighteen hundred and forty-two, I, Richard Charles Downes, parish judge and ex officio notary public in and for said parish, assisted by D. W. C. Bonham, counsel for absent heirs, Malwher Wallace and Temple S. Boons, freeholders of this parish, duly appointed and sworn appraisers, and by the witnesses hereafter named and undersigned, proceed at my office to make the following inventory and appraisement of the property of the succession of Richard G. Dunlap, and the following is a true statement of all said property of which we had any knowledge, and of the appraisement thereof made by said appraisers, viz:

A negro woman named Hannah, aged twenty-two years, and her child, 10 months old, named Mary Emily, appraised together at five hundred dollars - - - - -	$500 00
One Texas Treasury note for $100, app'd at - -	6 00
One trunk and apparel, app' at - - - - -	20 00
And Hugh W. Dunlap, curator, acknowledged to be in possession of ten dollars belonging to said deceased - -	10 00
And among the effects of the deceased was found a gold watch, claimed by the widow of said deceased, supposed to be worth - - - - - - - - -	100 00

And having finished said appraisement and inventory, of which the amount is $636, (six hundred and thirty-six dollars,) I have closed the same, at the place and time above mentioned, in presence of Lewis H. Bryan and Jacob C. Scale, competent witnesses, who sign with said appraisers, counsel, curator, and me, judge and notary, after due reading hereof.

Signed,
TEMPLE S. BOONS,
M. WALLACE,
H. W. DUNLAP,
D. W. C. BONHAM,
L. H. BRYAN,
J. C. SCALE.
R. C. DOWNES, *Parish judge.*

State of Louisiana, parish of Madison:

Court of probates.

I certify that the foregoing is a true copy of the original inventory of the property of the succession of Richard G. Dunlap, on file and of record in my office; and I further certify, that the foregoing inventory is the only one taken of the property of said succession by the parish judge of said parish.

Witness my signature and official seal this 11th day of May, A. D. 1843.

E. CAVILEER, [SEAL.]
Dept. Cl'k.

Endorsed: 7; court of probates; succession of Richard G. Dunlap; inventory filed for record June 6th, 1842; fee, $2; copy.

R. C. DOWNES, *P. judge.*

No. 8.

General Land Office, February 6th, 1843.

Sir: There is now pending, before Congress, an application in behalf of James Pepper, and others, to have confirmed to them the back preemption entry of section 52, in T. 16, R. 14 E. You will, in consequence, be pleased consider the instructions from this office, of 22d December last, to dispose of this tract in the manner therein pointed out as revoked, and notify the parties interested that the sale of this section is indefinitely postponed.

Very respectfully, your obedient servant,

———, *Commissioner.*

To Register of the Land office, Ouachita, La.

Endorsed "8."

No. 9.

General Land Office, Feb'y 7, 1843.

Sir: I have to acknowledge the receipt of your letter of the 22d ult., and, in reply to so much of it as relates to the proposed offering of section 52, in T. 16, R. 14 E., refer you to the enclosed copy of my letter of yesterday to the register at Ouachita, in which he is instructed to cause the sale of that section to be indefinitely postponed.

Very respectfully, your obedient servant,

THOS. H. BLAKE, *Commissioner.*

James Pepper, esq., Richmond, Louisiana.

Endorsed "9."

No. 10.

27th Congress, 3d session. H. R. 777. (Rep. No. 161.) February 9th, 1843.

Read twice and committed to a Committee of the Whole House tomorrow.

Mr. Moore, from the Committee on Private Land Claims, reported the following bill:

A bill for the relief of James Pepper and others.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the entry made at the land office at Washitta, Louisiana, by James Pepper and others, of section 52, in township numbered sixteen, of range numbered 14 east, on the 30th day of May, one thousand eight hundred and thirty-six, by certificate number three thousand four hundred and twenty-six, be, and the same is hereby, confirmed, and the commissioner of the General Land office is authorized to issue a patent thereof.

Office House of Rep. United States,
Washington, April 11th, 1843.

This certifies, that the printed bill on the opposite side of this paper, and the printed report, No. 161, hereunto attached, are true copies of the original bill and report reported to the House of Representatives of the United States, on the ninth of February, eighteen hundred and forty-three. No proceeding was had on said bill and report, other than what is stated on the face thereof.

Witness my hand, and the seal of the House of Representatives of the United States, the day and year above written.

M. ST. CLAIR CLARK,
Clerk H. Rep. U. S. [SEAL.]

27th Congress, 3d session. (Rep. No. 161.) H. of Rep. James Pepper et al., to accompany Bill H. R., No. 777. February 9th, 1843.

Mr. Moore, from the Committee on Private Land Claims, submitted the following report:

The Committee on Private Land Claims, to whom was referred the petition of James Pepper and others, report, that the petitioner state that, as heirs of Cicero Jefferson, they were the owners of the claim of James James, to section 22, in township 16, of range 14 east, in the district north of Red river, Louisiana, and that, under the back pre-emption law, they entered section 52, in the same township and range, in good faith, without knowledge of any defect in the title to section 22, which appeared to have been surveyed, and the survey approved by the Surveyor General, as the claim of James James; and that the Commissioner of the General Land office, in 1842, declared the section 22 as public land, and wrongfully surveyed as private property, and cancelled the entry, No. 52, which they, (the petitioners,) had previously sold, and that, in consequence thereof, they are likely to suffer great damage, and pray that their entry of section No. 52 may be confirmed.

From the correspondence of the Commissioner of the General Land Office on this subject, it appears that section 22 is laid down on a township plat, approved by the Surveyor General, Gideon Fritz, on the 11th of April, 1831, in the name of James James; and also in a similar manner on a plat previously approved by Surveyor General Turner; that there is no evidence on file to show why this private claim was erroneously located; that the present surveyor general appears to assign no other reasons for setting aside the location than that it is already located in adjoining townships.

On referring to the report of the commissioner to investigate titles in that district of country, made October 16, 1822, we find that James James prepared three claims before the board by plats of survey, (see No. 115, 116, and 117; S. P. vol. 2; P. L. p. 757,) the two last being for the same land, one only of which was confirmed, to wit, the first. This may have given rise to the error in the location, if any there be, which we are not called upon to examine. The testimony before the committee shows, that the parties appeared to act in good faith in making the entry of the back lands; and, although the commissioner appears to have acted properly in the matter, yet the lands are represented as swamp lands; and we cannot perceive that any advantage is to be derived to the United States by setting aside the entry, which was regularly made and paid for in 1836. A bill, therefore, is reported to confirm the entry of section 52.

Endorsed "10."

No. 11.

General Land Office, April 8th, 1843.

Sir: It appears from the records of this office, that, on the sixth July, 1837, certificate No. 3521 was transmitted to the register at Ouachita for correction, with the remark opposite to it: "Section 54, covered nearly altogether by the back claim of Gibeon Gibson, see receipt No. 3143, S. E. part, or lot 3, of sec. 53, covered by said claim."

This certificate was issued to Sarah H. Evans, Maxwell D. Pepper, Jesse B. Pepper, Louisa Pepper, and James Pepper, for the lot No. 3, of section 54, and the whole of section No. 53, in T. 16, R. 14 E. On examination had to-day it appears, that the entry of lot No. 3, of section 54, conflicts with Gibson's claim, but to what extent is not now known, and that no part of that claim can conflict with the entry of section 53, as erroneously stated in the letter from this office of the 6th July, 1837. The register at Ouachita has been this day advised accordingly.

Very respectfully, your obedient servant,

THOMAS H. BLAKE, *Commissioner.*

James Pepper, esq., of Louisiana, present.

No. 12.

State of Louisiana, ninth district court,
parish of Madison:

JAMES PEPPER et al.
vs. } No. 127.
R. G. DUNLAP.

I, Walter A. Greisham, do hereby accept the authorization given me by G. W. Tarkington, deputy sheriff of the parish of Madison, La., to take charge of the property levied on by him in the above case, and agree to keep said property, together with the slaves on said plantation, which is described in the said authorization, subject to the order of T. B. Scott, sheriff of the parish of Madison, La.

W. A. GREISHAM.

Parish of Madison, La., June 21, A. D. 1842.

Endorsed, acceptance of Walter A. Greisham, "12."

No. 13.—*Commission and testimony.*

State of Louisiana,
parish of Madison, 9th district court:

Hugh W. Dunlap, curator of Richard G. Dunlap, dec'd,
vs. } 127.
James Pepper et al.

To Lewis F. Lamy, parish judge of Ouachita, or any other judge or justice of the peace residing in said parish, greeting:

Know ye, that, reposing special trust and confidence in your prudence, knowledge, and fidelity, you are hereby nominated and appointed, and, by these presents, invested with full power and authority to cause to come before you Henry O. McHenry and Henry Holmes, both residing in the parish of Ouachita, Louisiana, and them diligently to examine, on their oath or affirmation, touching their knowledge in a certain matter of controversy now pending in the 9th judicial district court of the State of Louisiana, and for the parish of Madison aforesaid, wherein Hugh W. Dunlap, curator of Richard G. Dunlap, deceased, is plaintiff, and James Pepper et al., defendants; which said examination, so taken, is to be read in evidence on the said trial of said cause, and which you will also send closed, under your hand and seal, directed to the clerk of said court of the parish of Madison with all due speed, together with this commission, on or before the first Monday in May next.

Witness the honorable Thomas Curry, judge of said court, this 16th day of February, A. D. 1843.

[SEAL.]

J. W. COUCH,
Dep. clerk of said 9th district court.

Ninth district court,
parish of Madison, State of La.:

Hugh W. Dunlap, curator of Richard G. Dunlap, deceased,
vs. } 127.
James Pepper et al.

Interrogatory to be propounded to Henry O. McHenry and Henry Holmes, residents of the parish of Ouachita, Louisiana, the answers to which, when taken, are to be read in evidence, on behalf of the defendants, on the trial of the above entitled cause.

Interrogatory 1st. Were you or not officers of the United States, in the land office at Monroe, La., during the years 1841 and '2? And, if so, please state what office each of you held during that time.

Int'y 2d. Are you or not acquainted with Hugh W. Dunlap, of the parish of Madison, La.? And, if yea, please state whether or not certain communications or letters, by you sent to the Commissioner of the General Land Office during the year 1841 and 1842, relative to section (22) twenty-two, and the back concession thereof in township (16) sixteen, range (14) fourteen east, in the district of lands north of Red river, Louisiana, were at the instance and request of Hugh W. Dunlap; and, if not, at whose instance were those communications made.

Int'y 3d. Was or was not Hugh W. Dunlap at Monroe several times dnring the year 1842? And, if so, please state how many times he was there, and whether or not he communicated with you relative to the land above described; and, if so, please state fully and explicitly the purport of all communications made by him to you, and whether or not other persons conferred with you relative to said land. And, if so, what are the names of those persons.

Int'y 4. Did you or not write to the Commissioner of the General Land Office relative to the above described land before he wrote to you upon that subject? And, if yea, please give a copy of your said letter or letters to said commissioner as a part of your answer to this interrogatory.

Interrogatory 5th. Did or did not said Hugh W. Dunlap pay or deposit the money with the receiver of public moneys, for the purchase of lots 1, 2, 3, and 4, of section 22; and, if not, who paid for the same; and was or was not said Dunlap present when said land was entered?

Interrogatory 6th. Was or was not said Hugh W. Dunlap present when the proof of settlements made by the persons who entered same section 22 was made, by which they acquired pre-emption to the same? And please state fully and explicitly all you know relative to said proof.

Int'y 7th. If you know any thing to the advantage of the defendants in this suit, please state it.

J. PEPPER, *for defendants.*

State of Louisiana, parish of Madison:

Ninth district court, clerk's office.

I do hereby certify the foregoing to be a true and correct copy of the original interrogatories on file in said suit in this office.

Witness my signature, and impress of the seal of said court, this 16th day of February, A. D. 1843.

[SEAL.] J. W. COUCH, *Clerk of said court.*

Endorsed: 127, H. W. Dunlap, curator of R. G. Dunlap, deceased, vs. James Pepper et al. Petition and interrogatories filed Feb'y 8th, 1843.

J. W. COUCH, *Dept. clerk.*

Let a commission issue as prayed for in the foregoing petition. Feb'y 8th, 1843.

J. W. COUCH, *Dep. clerk, copy.*

Ninth district court,
parish of Madison, State of Louisiana:

HUGH W. DUNLAP, curator of Richard G. Dunlap, deceased,
vs.
JAMES PEPPER et al.
} 127.

Answers, under oath, of Henry O. McHenry, register, and Henry Holmes, receiver, officers of the United States land office at Ouachita, to the interrogatories propounded to them, as herewith annexed, which answers are to be read in evidence on behalf of the defendants on the trial of the above entitled cause, viz:

Answer to 1st int'y. Yes. We have been officers of the United States land office at Ouachita since Oct., 1841, to wit, Henry O. McHenry, register, and Henry Holmes, receiver.

Answer to 2d int'y. Yes. We are acquainted with Hugh W. Dunlap, of Madison parish, Louisiana; we made no communication whatever to the Commissioner of the General Land Office at the instance or request of said Dunlap, or of any other persons, in relation to the land referred to in this interrogatory.

Answer to 3d int'y. Yes. Said Dunlap was at this Monroe place twice during the year 1842. During his first visit he enquired of us if our office had been furnished, by the surveyor general of La., with a plat of section 22 and 52, in township No. 16, of range No. 14 east, which was answered in the negative. Said Dunlap at same time made enquiries of us in relation to the requisites of the law of 1838, conferring pre-emption rights on settlers on the public lands. He remarked that he believed himself entitled to a right of pre-emption to a part of said section 22, and, after his explaining to us the circumstances connected with his claims, we informed him that we did not conceive them sufficient to entitle him to the privilege he claimed. Nothing further occurred between us in relation to said sections 22 and 52, until said Dunlap came to our office in October, 1842, except that, when departing from our office, (at his first visit,) he made a request of us to inform him when the plat or diagram of said sections should be received at our office, from that of the surveyor general, which we done; and we did not deem it of sufficient importance to keep a copy of one letter, which was confined to the fact of the receipt of the plat of said section; when said Dunlap visited our office the second time, which we believe was on or about the 21st of October last, he made application to enter at private sale said section 52. He informed the register that he would appeal from his refusal to permit him to enter said section 52, to the Commissioner of the General Land Office. The fact of his mentioning this caused the register to write to the commissioner on the subject, under date of the 27th October, 1842, a copy of which, marked C, is herewith attached and made part of this answer. The only other person or persons that we remember conferring with us in relation to said sections were John Bartlett, Walter A. Greisham, Charles B. McKiernan, and Robert W. Burney, the three first named on the 16th or 17th of August last, and the latter in the months of October and November last; which conferences or communications were entirely confined to their individual claims as pre-emptors, claiming under the provisions of the act of Congress "approved Sept. 4th, 1841," to respective lots or tracts in said section 22, which they were subsequently allowed to enter.

Answer to 4th interrogatory. Yes; we communicated, by letter, with the Commissioner of the General Land Office, relative to said sections, as will appear by the letter of the register, dated 8 August, 1842. A copy of the same, marked A, is herewith attached, and made part of this answer. And again, on the 18th of August (1842) last, we addressed a joint letter to the commissioner; a copy of which is also herewith attached, marked B, and made part of this answer.

To the 5th interrogatory we shall answer separately, commencing with Henry O. McHenry. Said Dunlap did not, to my knowledge, pay or deposite any money with H. Holmes, the said receiver, for the payment or purchase of said sections, or any part thereof; or did the said Dunlap, to my knowledge, pay or deposite money with any other person for that or any other purpose. On the 17th of August (1842) last, which I believe was the date when said Bartlett, Greisham & McKiernan filed their proof in support of their respective claims for pre-emption rights to the lots they respectively claimed in said section 22, and at which time they made application to enter the same, which being refused, they made a tender of payment for the same. Those (Bartlett, McKiernan & Greisham) persons left my office then, but returned to the door of the same, on horseback, on their return home. They called for the purpose of getting me to take charge of their money; they saying it was both burthensome and troublesome to take back home. I declined doing so; but suggested their applying to receiver, who then had a vacant iron safe. I think as they were about starting to see the receiver he came up, and I understood he permitted them to deposite their money in said iron safe. Said Dunlap was in Monroe when George W. Copely, esq., made application, in behalf of said McKiernan, Bartlett, & Greisham, to enter the lots claimed by them, which was on the 21st October, 1842. I do not know who paid the purchase money for the same; nor do I know that said Dunlap was present or not when the said lots were entered. Robert W. Burney was permitted to enter the lot No. 1 in said section 22 on the 18th November last, as a pre-emption, under the act of 4th Sept., 1841. Said Dunlap was not then in Monroe; nor do I know whether Burney paid for the same himself or not. The reasons for refusing the application of said Bartlett, McKiernan and Greisham, to enter their claim, will be found in the said joint letter of register and receiver, of 18th August, 1842.

Separate answer of H. Holmes to 5th interrogatory. H. Holmes declares and says, that Hug. W. Dunlap did not deposite any money with him for the payment or purchase of lots Nos. 1, 2, 3, and 4 of said section No. 22; but Messrs. Greisham, McKiernan & Bartlett, after filing their respective proofs, and making a tender of payment for the lots separately claimed by them in said section 22, met me as I was about entering the register's office, on the 17th of August last; they were then on horseback; and they requested me to permit them to deposite their money with me, until such time as it may be ascertained they would be permitted to enter the lots claimed by them or not in said section 22. They stated, at same time, that the register would not take charge of it; and that he referred them to me, as having a large iron safe not then in use. I consented to their placing their money in said iron safe. At same time they informed me that George W. Copely, esq., was their agent, and would attend to the making of their entries when permitted.

Those persons (McKiernan, Bartlett & Greisham) informed me that the amount so deposited was about eight hundred dollars; which subsequently I ascertained to be nearly that amount. George W. Copely did attend to their business, and signed their applications to enter the lots respectively claimed by them in said section 22; and he directed me to appropriate the money they had deposited for the payment of the same, which I did. Said Dunlap was in Monroe when said Copely made said entries, but was not when said Burney entered his claim.

Answer to 6th interrogatory, jointly. Said Dunlap was not present, nor was he in Monroe, that we know of, when any of said persons *that* claimed the privilege of entering said lots in section 22; nor was he present when they filed or made proof to the same. We considered their proof sufficient, but the letter of the commissioner, of September 9th, 1842, in reply to our said letter of 18th August, 1842, made it requisite for the parties claiming under the law of 1841, to show that no other person was settled on the same lands claimed by them, so as to have entitled such person or persons to a pre-emption under a law prior to that of 1841, which said Greisham, Bartlett, Burney & Bartlett climed under. Said Hugh W. Dunlap filed his affidavit in each claim, which, in our opinion, removed all obstacle in *they* way; and we then decided the said claimants to the lots in said section 22 could enter the same.

Answer to 7th interrogatory, jointly. We do not know of any thing that can be of any advantage to defendants in said suit.

HENRY O. McHENRY, *Register*.
H. HOLMES, *Receiver*.

Sworn to and subscribed before me, this 27th day of March, 1843.

O. D. STELLMAN, *J. Peace*.

State of Louisiana, parish of Ouachita:

I, Oliver D. Stellman, justice of the peace in and for said parish and State, do hereby certify, that, by virtue of the authority in me vested by the annexed commission, issuing from the ninth district court for the parish of Madison, I proceeded to the offices of Henry O. McHenry, register, and Hardy Holmes, receiver, witnesses in a certain cause now pending in said 9th district court for the parish of Madison, and State aforesaid, wherein Hugh W. Dunlap, curator, is plaintiff, and James Pepper et al., defendants; and that said McHenry reduced to writing their answers to the several interrogatories hereto annexed. I further certify, that said witnesses duly sworn to and subscribed the same before me, at their respective offices, in the town of Monroe.

Given under my hand, at my office, in the town of Monroe, in the parish and State aforesaid, this 27th day of March, 1843.

O. D. STELLMAN, *J. Peace*.

(*Letter C.*)—*Copy*.

Land Office at Ouachita, La., October 27th, 1842.

Sir: General Hugh W. Dunlap has applied for the purchase of section 52, T. 16, R. 14 E., made vacant as set forth in your letter, dated September 9th, 1842, to the register and receiver of this office. I refused the application of Gen'l Dunlap, for the reason that I did not consider the tract applied for subject to private entry. And I am informed he has appealed from my decision to you. I have thought it proper, therefore, to give you all the information this *offices* possesses in relation to it. From an examination of the old plat of the township on file, it appears that the front lots of sections 48 and 52 were surveyed in the fall of the year 1828. The plat was approved and certified by James P. Turner, surveyor of the public lands south of Tennessee, on the 27th April, 1829. This township was proclaimed, and offered at public sale on the 3d Monday of November, 1829. And as there was no back pre-emption law then in existence, whereby said section 52 could be claimed, it is to be presumed it was offered. From the manner this section was surveyed, being different to any of the interior sections, it is at least supposable the claimant of sec. 22 (the front land) had anticipated the passage of a back pre-emption law, and must have influenced the deputy surveyor to depart from the regular mode. You are aware this (52) section was entered, to the extent of 640 acres, by the heirs of Cicero Jefferson, on the 28th May, 1836, as the back concession to section 22, surveyed as the claim of James James, per receiver's receipt No. 3426. There can be little doubt but this (52) section was held up as only subject to entry by the front proprietor, under the provisions of the act of 15 June, 1832. I am therefore inclined to the opinion this section (52) has been placed in a situation that would bring it under the instructions contained in the 9th section of the circular of 1st January, 1836. You will please instruct me in relation to the application of General Dunlap, as also the view I have taken of the subject, at your earliest convenience.

I remain, sir, most respectfully, your obed. servant,

HENRY O. McHENRY, *Register*.

Hon. Thomas H. Blake,
Comm'r of the Gen'l Land Office, Washington city.

(Letter A.)—*Copy.*

Land Office at Ouachita, La., August 8th, 1842.

Sir: On the 4th inst., I received, by mail, a package from the surveyor general of La., at Donaldsonville, containing a diagram of the subdivisions of sections 22 and 52, in township 16, R. 14 E.; also diagrams of the locations and connections of the claims of Louis Boligny, B. 16, under the Marquis Maison Rouge; subdivisions of sections made fractional thereby, in T. 14, range 3 and 4 E., and T. 13, R. 4 E.; all which I have attached to their respective township maps on file in this office.

I have the honor to be, sir, most respectfully, your obt. servant,

HENRY O. McHENRY, *Register*.

Hon. Thomas H. Blake, *Commissioner*
of the General Land Office, Washington city.

(Letter B.)—*Copy.*

Land Office, at Ouachita, La., August 18th, 1842.

Sir: On the 8th inst. the register informed you of his having received from the surveyor general of La. a plat, exhibiting the subdivision into lots of sections 22 and 52, of township No. 16, R. 14 east; since then, the lots in section 22 have been claimed by settlers, under the provisions of the act, " approved Sept. 4th, 1841." They have filed proof of settlements, &c., made a tender of payment; we declined permitting the entries, for the reason *that* that this office has not been officially informed that the lots claimed by said settlers are to be considered as public lands, and subject to the claims of pre-emptions under said act, or any other act of Congress. You will be pleased to give us such instruction as to the course we shall pursue in relation to their claims that you may deem necessary.

We have the honor to be, sir, your obedient servant,

HENRY O. McHENRY, *Register*.
H. HOLMES, *Receiver*.

Hon. THOMAS H. BLAKE, *Commissioner of the General Land Office, Washington city.*

Envelope endorsed.

Hugh W. Dunlap, curator of R. G. Dunlap, dec'd, vs. James Pepper et al. Commission and testimony to the clerk of the 9th district court, for the parish of Madison, Richmond, State of Louisiana.

Commissioner's fees, $5. Register's fees, $10.

Filed April 11th, 1843.

A. R. POTTER, *D'y Clerk*.

No. 14—*Testimony by consent*.

HUGH W. DUNLAP, curator, &c.,
vs.
JAMES PEPPER et al.
} No. 127.

Ninth district court of the State of Louisiana, for the parish of Madison.

Examined in chief.—Benjamin James, being duly sworn, says that, as early as eighteen hundred and five or six, his father, James James, commenced to reside on what is commonly called the James James tract, (section 22, township 16, range 14 east,) it being part of the land embraced in the sale from defendants to R. G. Dunlap; deponent was then about 12 years of age; deponent, some time before the sale of the land made by Lilly to C. Jefferson, (Joseph Pepper,) sold all his interest in the land, as one of the heirs of James James, to Aaron Lilly without warranty. James James continued to reside on and claim the land till his death in the month of June, in 1823; he did, several times, leave said land for a time, in consequence of high water; some three several times he left the land in consequence of the high water as aforesaid; the first time he left it only for a short space of time, and returned to it the same year; the second time he left it, and staid away for a year or more; and the third time he left it, and staid away nearly or quite two years. He then returned to the land, and remained on it till the time of his death in 1823; during all this time, James James always claimed said land as his own; after the death of James James, his wife, Delilah James, mother of deponent, continued to reside on said land for about two years, when Aaron Lilly, who married Elizabeth James,

1092.

daughter of James James, took possession of it, and continued in possession of it till the time it was sold by Lilly to C. Jefferson, (Joseph Pepper.

Deponent, and the other heirs of James James after his death, claimed the land as his heirs, and possession was held as aforesaid; while Lilly held the land, he tore down the house which had been built on the land by James James, and built one on it himself, which was standing at the time the land was sold by Lilly to C. Jefferson, (Joseph Pepper.)

Cross-examined.

James James, after 1801, and before 1805, resided on, and claimed a tract of land a few miles below the town of Vicksburg, in Louisiana, which deponent believes was confirmed by Congress to said James James. The heirs of said James James, after his death, sold said last mentioned tract of land, claiming it, by right of succession, to their father. BENJAMIN JAMES.

Sworn to and subscribed, before me, in open court, this 10th day of May, 1843. A. R. POTTER, *Dep. Clerk.*

We agree the above shall be read on the trial of the above entitled cause.

STOCKTON & STEEL, and
JAMES PEPPER,
For Defendants
H. W. DUNLAP.

Endorsed.

No. 127. H. W. Dunlap, curator, &c., vs. James Pepper et al. Testimony taken by consent.
" 14." Filed May 10th, 1843.

A. R. POTTER, *D'y Clerk.*

No. 15—*Testimony of Robert Ford.*

H. W. Dunlap, curator of R. G. Dunlap, deceased,
vs.
James Pepper et al.

Ninth district court, parish of Madison.

This day personally appeared, before the undersigned authority, Robert Ford, of said parish of Madison, who, being duly sworn, deposeth and says, that he came to Milliken's Bend, now in said parish, in the year 1816; that during that year, or the year 1817, he became acquainted with James James, since deceased, who, at that time, resided on the Mississippi river, a short distance below James' bayou; which bayou was then as now known by that name; that said James had a family living with him, and that there was a field in cultivation, the extent of which is unknown to this deponent; that said James continued to reside on the same land for several years until his death.

ROBERT FORD.

Sworn and subscribed, before me, in open court, this 11th day of May, A. D. 1843.

A. R. POTTER, *D'y Clerk.*

The above testimony is taken by consent of parties; and all objections to the competency of the same are waived.

STOCKTON & STEEL, and
JAMES PEPPER,
For defendant in injunction.
H. W. DUNLAP.

Endorsed.

No. 127.—H. W. Dunlap vs. James Pepper et al. Testimony of Robert Ford taken by consent. "15." Filed May 11th, 1843.

A. R. POTTER, *Dep. Clerk.*

No. 16.—*George Watts' affidavit.*

Ninth district court, parish of Madison, State of Louisiana:

HUGH W. DUNLAP, curator &c.
vs.
JAMES PEPPER et al.

George Watts, sworn on behalf of defendant in injunction, said, that he lived at the house of Hugh W. Dunlap, the plaintiff, during the summer of the year A. D. 1842; that he lived there on the 3d day of August, 1842; that he saw the negroes of H. W. Dunlap employed in building the houses or cabins on the 1st, 2d, 3d, and 4th quarters of the section 22, in dispute between Pepper and Dunlap, on the front section mortgaged to Peppers and others, and that the said houses were not built by Charles B. McKiernan, Walter Greisham, Robert Burney, and John Bartlett.

He states further, that McKiernan and Greisham ate at Dunlap's table every day during the time he lived there, except when absent from the plantation, and that Dunlap's house is not on the said section 22, mortgaged as aforesaid.

He states further, that he does not know that the aforementioned persons had not employed these negroes of Dunlap, but that they were not present or about when the cabins were built.

Cross-examined.

He says, that the gin, and stables, and crib are on the section 22, T. 16, R. 14, and that the gin, and every thing attached thereto, is worth $1,500; mill 700 or 800; crib 700.

Mr. Watt further states, by way of explanation, that he saw three of the cabins after they were built, on section 22, and Dunlap's negroes building another; but does not know who built the three first, as they were built before he saw them, and that W. A. Greisham had charge of H. W. Dunlap's negroes all the time he lived with Dunlap.

GEORGE WATT.

Sworn and subscribed to, before me, in open court, this 10th day of May, A. D. 1843.

A. R. POTTER, *Dep. Clk.*

We agree to waive all objections to the form of taking the within deposition, but reserve the right to object to its competency.

H. W. DUNLAP.
STOCKTON, & STEEL, and
JAMES PEPPER, *Attys. for Defts.*

Endorsed: No. 127. H. W. Dunlap, curator, &c., vs. James Pepper et al. George Watts' affidavit, "16." Filed May 10th, 1843.

A. R. POTTER, *Dep. Clk.*

No. 17.—*Certificate of mortgages.*

State of Louisiana, parish of Madison:

I, Richard Charles Downes, parish judge and ex officio recorder of mortgages, in and for said parish, do hereby certify, that there does not exist of record, in my office, any mortgage or incumbrance whatsoever upon the property and in the name of Hugh W. Dunlap, but the following, viz:

1st. The vendor's privilege in favor of Richard G. Dunlap, for the sum of thirty-eight thousand two hundred dollars, on the following described property, to wit: all that plantation situate above the town of Tuscumbia, fronting on the Mississippi river, and composed of the following described lots: Section No. 22, containing 640 acres, and the back concession to said section No. 22; also fractional sections Nos. twenty-three, 24, and 25, sec. No. 53, and lot No. 3, of section No. 54, containing in all two thousand two hundred and eighty-eight acres, (2,288.) All the above named land lies in township 16, range No. 14 east, in the district of lands north of Red river, Louisiana. Also the following named eighteen negro slaves, viz: Jim, Isam, Clem, Bob, Sil, Sylvia, Jacob, Nelson, Henry, Old Jacob, Henry, Rachel, Peggy, Caroline, Louisa, Ailsey, Sam, Anthony, which negroes are now on the above named plantation, except Jim, who has been runaway near two years. Also all the stock of horses, oxen, hogs, cattle, farming utensils, &c., belonging to said plantation. Recorded May 7, 1839.

2d. A special mortgage in favor of Ferdinand Sims, to secure the payment of a twelve months' bond, for the sum of two thousand six hundred and twenty-five dollars, due on the 18th day of April, A. D. 1841, and to secure the payment of which he has specially mortgaged and hypothecated the following described property, to wit: The undivided half of a tract of land, containing in all three hundred and five $\frac{20}{100}$ acres, fronting on the Mississippi river, about ten miles above the city of Vicksburg, and being lot or fractional section No. 21, in township 16, of range 14 east; and a tract adjoining the above mentioned tract, containing one hundred and forty and $\frac{64}{100}$ acres, being fractional section No. 43, in the township and range aforesaid, resulting from a mortgage retained on a sheriff's deed, passed on the 18th day of April, A. D. 1840, and recorded April 25th, 1842.

3d. A special mortgage in favor of Gregg and Elliott, for the sum of three thousand three hundred and seven $\frac{94}{100}$ dollars, to secure the payment of which, the said H. W. Dunlap, on the 25th day of Feb., A. D. 1841, specially mortgaged and hypothecated the following described property, viz: A tract of land situate in this parish, composed of fractional sections Nos. 23, 24, and 25, section No. 53, and lot No. 3, of section 54, all in township No. 16, of range 14 east, in the district of land north of Red river, resulting from an act passed before Richard Charles Downes, parish judge, and recorded, on the day and date last aforesaid.

4th. A judicial mortgage in favor of Alvarez Fisk, resulting from a judgment in a certain suit, by attachment, styled Alvarez Fisk versus Hugh W. Dunlap, No. 258, for the sum of thirty-six hundred and twenty-six dollars and forty-two cents, besides interest; in which said suit, the following property was attached by the sheriff of the parish of Madison, on the 15th day of December, A. D. 1840, to wit, eight certain slaves, viz: Felix, a man, black complexion, aged about 35 years; Courtney, a woman, *a woman*, yellow complexion, aged 40 years; Isaac, a man, copper complexion, aged 25 years; Martha, of copper complexion, aged 27 years; Jim, black complexion, aged 30 years; Phillis, yellow, aged 30 years; Jenkins, a man, black complexion, aged 30 years; and Jenkins, black complexion, 25 years; Ellen, a woman, black complexion, aged 18 years; which said judgment was recorded in my office, on the 23d day of March, A. D. 1841.

5th. A general or judicial mortgage, resulting from a judgment or order of seizure and sale, rendered by the judge of the ninth judicial district court, for the parish of Madison, in favor of N. and J. Dick & Co. against said Hugh W. Dunlap, on the 18th day of March, A. D. 1841, for the sum of eight thousand eight hundred and ninety-two $\frac{80}{100}$ dollars, with the interest thereon, at the rate of eight per cent. per annum, from the 28th day of June, 1839, and nine and $\frac{50}{100}$ dollars costs; which judgment was recorded in my office on the 29th day of March, A. D. 1841.

6th. A judicial or general mortgage, resulting from a judgment or order of seizure and sale, rendered by the judge of the ninth judicial district court, for the parish of Madison, on the 11th day of March, A. D. 1841, in favor of Martin Pleasants & Co., for the sum of six thousand two hundred and forty-five $\frac{36}{100}$ dollars, with interest thereon, at eight per cent. per annum, from the 25th day of November, A. D. 1839. Recorded in my office, 30th March, 1841.

7th. A judicial or general mortgage, resulting from a judgment or order of seizure and sale of said court, in favor of Yeatman, Woods & Co., for the sum of six thousand and twenty-six $\frac{02}{100}$ dollars, with interest, at eight per cent. per annum, from the 25th May, 1839, and one hundred and eighty-six $\frac{60}{100}$ dollars costs of suit. Recorded on the 7th day of April, A. D. 1841, in my office.

8th. A judicial or general mortgage, in favor of James Pepper et al., as follows: That the injunction be dissolved and set aside, with ten per centum damages upon the sum of twenty-two thousand five hundred dollars, the amount due of the judgment, the execution of which was enjoined; and interest on the same, at ten per cent. per annum, from 8th March, 1841, till 26th May, 1841, resulting from a judgment of said court. Recorded in my office, June 4th, 1841.

9th. A sale, with the right of redemption, or deed of trust in favor of W. C. Demoss and C. M. Hart, on certain lands in Mississippi, and 77 slaves, to wit: Billy, Ivan, Emma, Mary, Bella, Billy, Caroline, Cela, Dinah, Nelly, Grace, Richard, Elsey, Binnah, Harrison, Susan, Priss, Susannah, Ruth, Will, Charlotte, Maria, Nancy, Grace, Bens, Wilson, Hector, sr.. Hector, jr., Willis, Edward, Tener, August, Not, sr., Lucy, Centu, Kate, Phoebee, Tamar, Abel, Neppa, Binor, Elsey, Harry, Creted, Binor, Tenors, Sybla, Daniel, Andrew, Granville, Sarah, Jane, Grange, Natchez, Sandez, Chloe, Becca, Betty, Adeline, Hanna, Sandy, jr., Judy, Malinda, Rachel, Barbara, Doll, Ellen, Wilson, Sabar, Tenor, Mat, Nancy, Prince, Nat, jr., Delia and 2 children. Recorded in my office, August 11th, 1838.

Witness my signature, and the impress of my official seal, this 9th day of June, A. D. 1841.

RICHARD CHAS. DOWNES, *P. judge.*

(*Endorsed.*)—Certificate of mortgages; Hugh W. Dunlap; "17;" fee, $5.

No. 18.

General Land Office, *November 22d*, 1841.

Sir: On the plat in this office of township 16 north, range 14 east, dist. north of Red river, which was approved by Gideon Fitz, surveyor general, the 11th April, 1831, section 22 is laid down in the name of James James, confirmation not found. The area is not given by the surveyor general on the plat, but, in a note in pencil on the said plat, the area is estimated as 735 $\frac{40}{100}$ acres. On a plat of the said township, approved by S. Gen'l Turner, 27th April, 1829, section 22 is represented in a similar manner. On a plat in this office, of T. 15, R. 15 east, (appended to which is a statement from S. Gen'l Davis, dated May 22d, 1828,) sec. 22 is represented as embraced by the claim of James James. Rep. 115; contents in acre, 332 $\frac{42}{100}$.

On a plat in this office, of T. 16, R. 15 east, approved by Surveyor G. Turner, 27th April, 1829, section 17 is also represented as embraced by the claim of James James. Rep. 115; area, 121.60. In the report, dated 16th October, 1812, of the commissioner of the western district of Louisiana, State Papers, Public Lands, (Gales & Seaton,) vol. 2, pp. 747, 787, Claims, (settlement,) Nos. 114, 115, 116, 117, are entered in the name of James James, (*in his own right,*) one of which only, viz. No. 115, (B,) from 433 $\frac{59}{100}$ acres, appears to be confirmed. (See act of 29th April, 1816, L. L., p. 699, No. 290.) Herewith I enclose a copy of a letter to this office, of the 7th July last, from Geo.

W. Copely, esq., (of Monroe, La.,) referring to the subject of the foregoing, and request that you will investigate this matter, and report to this office the grounds on which these several sections referred to have been represented on the aforesaid plats, in the name of said James.

You will also be pleased to report to me the true location of the said claim No. 115, with a diagram, exhibiting its connexions with the contiguous surveys, and at the same time inform me of such of the lands alluded to as may be ascertained to be improperly covered by the said claims, designating such portions of the aforesaid locations as you may find should be annulled and vacated.

Very respectfully, your obedient ser't,

E. M. HUNTINGTON,
Commissioner.

F. D. Newcomb, esq.,
S. General, Donaldsonville, Louisiana.

Surveyor General's Office,
Donaldsonville, La., Dec. 9th, 1841.

Hon. E. M. Huntington,
Comm'r General Land Office, Washington, D. C.

Sir: I have received this morning your letter to G. W. Coply, esq., of 22d ult., which I presume was incorrectly addressed, and the enclosure intended for this office sent to him. The claim of James James, certificate, No. 115, is located in township 15 and 16, range 15 east, and he has no claim in T. 16, R. 14 E., or elsewhere in the State; wherefore, his name should be erased from the last named map.

With much respect, I have the honor to be, your obedient servant,

F. D. NEWCOMB,
Surv. Genl. La.

General Land Office, *December 21st,* 1841.

Sir: I have received your letter of the 9th instant, and herewith enclose a copy of my letter to you of the 22d ult. You will be pleased to forward to Mr. Coply, if you have not done so, the letter which was addressed to him from this office and enclosed to you.

Very respectfully, your obedient servant,

E. M. HUNTINGTON,
Commissioner.

F. D. Newcomb, esq.,
S. General, Donaldsonville, La.

Surveyor Gen's Office,
Donaldsonville, La., March 3d, 1842.

Hon. E. M. Huntington,
Comm'r General Land Office, Washington, D. C.

Sir: I have the honor to reply to several letters which my official duties have not permitted me to give earlier attention. Letter of November 22d, 1841, answered partially the 9th of December. Enclosed herewith are diagrams of the claim of James James, B, No. 115, it being section 2, T. 15, R. 15 E., and sec. 17, T. 16, R. 15 E., district north of Red river. The name of James James should erased from the map of T. 16, R. 14 E., D. N. R. R., and sec. 22 appear as public lands.

With much respect, your ob't servant,

F. D. NEWCOMB,
Surveyor General, La.

GENERAL LAND OFFICE, *June 18th*, 1842.

SIR: Being satisfied, from the evidence submitted and on file in the office, that the claim of James James, B, No. 115, was improperly located and laid down on section 22, in township 16 north, range 14 east, in the district of lands north of Red river, and that the said *tract* is *public land*, you are hereby instructed to have said section surveyed and laid off in lots corresponding with the adjacent land, a plat of which you will prepare, containing the measurements and area marked thereon, which you will transmit to the register at Ouachita.

You will please furnish this office a copy of said plat, properly authenticated. Your *early attention* is requested to the requisition contained in this letter.

I am, very respectfully, your ob't serv't,

THO. H. BLAKE,
Commissioner.

F. D. NEWCOMB, esq.,
Surveyor General, Donaldsonville, La.

SURVEYOR GENERAL'S OFFICE,
Donaldsonville, La., August 24, 1842.

HON. THOS. H. BLAKE,
Commissioner General Land Office, Washington city, D. C.

SIR: I have the honor to enclose diagram of subdivisions of sections 22 and 52, T. 16, R. 14 E., D. N. R. R., agreeable to your instructions of the 18th and 23d June last, duplicate of which was forwarded to the register at Monroe on the 28th of July.

With much respect, your ob't serv't,

F. D. NEWCOMB,
Surveyor General, La.

(On the following page will be found a copy of the diagram referred in above letter. See below.)

T. XVI., R. XIV. E., dist. north of Red river, Louisiana.

(*For diagrams, see original.*)

Surveyor General's office, Donaldsonville, July 23d, 1842.

I do hereby certify the above to be a true sketch of sections 22 and 52, township 16, range 14 east, district north of Red river, Louisiana, subdivided into lots as required by letter of the Commissioner of the General Land Office, dated June 18th, 1842.

F. D. NEWCOMB,
Surv. General, La.

General Land Office, September 13th, 1842.

Sir: I have to acknowledge the receipt of your communication of the 24th ultimo, and its enclosures, two subdivision plats of certain sections therein enumerated; all which have been placed on file in this office.

I am, very respectfully, your obedient servant,

THOMAS H. BLAKE, *Commissioner.*

F. D. Newcomb, *S. G., Donaldsonville, La.*

Land Office, Ouachita, La., August 18th, 1842.

Sir: On the 8th inst. the register informed you of his having received, from the surveyor general of Louisiana, a plat, exhibiting the subdivisions into lots of sections No. 22 and 52, of township number 16 north, range 14 east; since then, the lots in section number 22 have been claimed by settlers, under the provisions of the act approved September 4th, 1841; they have filed proof of settlement, &c., and made a tender of payment; we decline permitting the entries, for the reason that this office has not been officially informed, that the lots claimed by said settlers are to be considered as public lands, and subject to the claims of pre-emptors under said act, or any other act of Congress.

You will be pleased to give us such instructions, as to the course we should pursue in relation to those claims, that you may deem necessary.

We have the honor to be, sir, most respectfully, your obed't serv'ts,

HENRY O. McHENRY, *Register.*
H. HOLMES, *Receiver.*

Hon. Thos. H. Blake,
Commissioner of the Gen. Land Office,
Washington city, D. C.

General Land Office, September 9th, 1842.

Gentlemen: Your letter of the 18th ultimo, in reference to certain claims, under the act of 4th September last, preferred by claimants to portions of section 22 and 52, of township 16 north, of range 14 east, has been received. The first mentioned section was erroneously surveyed as the confirmation of James James, and the latter as the back concession for the said confirmation. This error being discovered, the surveyor general was directed to subdivide those sections, so that they might be disposed of as public land. You will, therefore, permit the entries by those claimants, if, by the proof filed, they shall show themselves entitled to the benefit of said law. As the land was not returned to your office as public lands until after the 22d day of June, 1842, claimants under the act of 1838 and 1840 (should there be any, which is more than probable) were prevented from proving up, and paying for their claims before that time; and may secure their land by making proof thereof, and payment for the same at any time within a year after the receipt by you of the plat of those sections. This fact is mentioned, because claims under a law of a prior date will take precedence of those under a law of a subsequent date, and may, therefore, be necessary for claimants, under the law of 1841, to show that no other person was settled on the same land claimed by them, so as to have entitled such person to a pre-emption under a law prior to that of 1841, under which they claim.

Respectfully, your obedient servant,

THOS. H. BLAKE, *Commissioner*.

Register & Receiver,
Ouachita, Louisiana.

Proof in case 7,686.

Land office at Ouachita, State of Louisiana:

Personally came and appeared before the register and receiver of said land office, Hugh W. Dunlap, a resident of the parish of Madison, Louisiana, who being duly sworn to depose to the facts in relation to any prior right of pre-emption that may exist to the one now claimed by John Bartlett, under the provisions of the act of Congress, entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved September 4th, 1841, to the lot number 2, of section 22, in township number 16 north, of range number 14 east; affiant declares that he has been well acquainted with the settlers in township 16, of range 14 east, and that there has been no person residing on section 22 in said township since April, 1837; that the same has been in his possession, and that of his brother, since the first day of January, 1837, until on or about the 2d day of August last, when the said John Butler entered and settled upon the lot number two of said section, and to which settlement affiant gave his consent.

Affiant further declares, that he knows of no person or persons whatever who are entitled to the right of pre-emption to said land claimed by said Bartlett, under any of the acts of Congress granting pre-emption rights to settlers on the public lands, passed in the years 1838 or 1840.

H. W. DUNLAP.

I, Henry O. McHenry, register of the land office at Ouachita, Louisiana, do hereby certify, that the foregoing affidavit was taken and subscribed before me, this 21st October, A. D. 1842.

HENRY O. McHENRY, *Register*.

We do hereby certify, that General Hugh W. Dunlap, the above subscribing affiant, is a gentleman of high standing, and that full faith and credit is due to his acts.

Witness our hands, this 21st day of October, A. D. 1842.

HENRY O. McHENRY, *Register*.
H. HOLMES, *Receiver*.

Land office at Ouachita, State of Louisiana:

Before the register and receiver of said land office, personally came and appeared Charles B. McKiernan, a resident of the parish of Madison, Louisiana, who being duly sworn to depose to the truth in relation to a pre-emption right claimed by John Bartlett, under the act of Congress entitled "An act to appropriate the proceeds of the sale of the public lands, and to grant pre-emption rights," approved September 4th, 1841, to the lot number 2, of section number 22, in township number 16, of range number 14 east. Affiant declares that he is well acquainted with said John Bartlett, the claimant to said lot; that he is a single man about twenty-nine years old, and is a citizen of the United States, he being a native thereof. Affiant declares that said Bartlett commenced and made a settlement on said land he claims, by erecting a log dwelling house thereon, on the 2d day of August, 1842; said house is 14 by 16 feet in size; that said claimant occupies the same, and makes it his home; he has no other home. Said claimant has from sixty to seventy acres in cultivation of said land he claims, on which crops of corn and cotton are now growing on the same. Affiant believes the said claimant to be an actual settler of the said land he claims, and that he has not quit or abandoned his own land for the purpose of obtaining the benefits of said act of Congress. Affiant declares that said claimant is an inhabitant of the said land he claims a pre-emption right, and that he personally resides on the same. Affiant further declares that he has no interest, either directly or indirectly, in the pre-emption right claimed by said Bartlett to said land.

C. B. McKIERNAN.

I, H. Holmes, receiver of the land office at Ouachita, Louisiana, do hereby certify, that *that* the above and foregoing affidavit was taken and subscribed to before me, this the 17th day of August, A. D. 1842.

H. HOLMES, *Receiver*.

We do hereby certify, that the within subscribing affiant, to wit, Chas. B. McKiernan, is a respectable man, and that full weight is due to his testimony.

Given under our hands, this 17th day of August, A. D. 1842.

HENRY O. McHENRY, *Register*.
H. HOLMES, *Receiver*.

I, John Bartlett, claiming the right of pre-emption under the provision of the act of Congress, entitled "An act to appropriate the proceeds of the sale of the public lands, and to grant pre-emption rights," approved September 4th, 1841, to the lot No. 2, of section No. 22, of township No. 16 north, of range No. 14 east, subject to sale at Ouachita, Louisiana, do solemnly swear, that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States; nor have I settled upon and improved said land to sell the same on speculation, but, in good faith, to appropriate it to my own exclusive use or benefit; and that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which I may acquire from the Government of the United States should enure, in whole or in part, to the benefit of any person except myself.

JOHN BARTLETT.

I, H. Holmes, receiver of the land office at Ouachita, La., do hereby certify, that the above affidavit was taken and subscribed before me, this 17th day of August, A. D. 1842.

H. HOLMES, *Receiver.*

On the back of the paper containing the foregoing affidavits was the following endorsement, viz:

1841 John Bartlett, lot No. 2, sec. 22, T. 16, R. 16 E., per certificate No. 7,686. Payment tendered for the within described land on the 17th day of August, A. D. 1842.

H. HOLMES, *Receiver,*

"*Pre-emption act of 4th September*, 1841."

No. 7,686.

Land Office at Ouachita, La., October 21st, 1842.

It is hereby certified, that, in pursuance of law, John Bartlett, of Madison parish, State of Louisiana, on this day purchased of the register of this office the lot numbered two, of section No. twenty-two, in township No. 16 north, of range No. 14 east, containing one hundred and sixty-one $\frac{58}{100}$ acres, at the rate of one dollar and twenty-five cents per acre, amounting to two hundred and one dollars and ninety-seven cents, for which the said John Bartlett has made payment in full, as required by law.

Now, therefore, be it known, that, on presentation of this certificate to the Commissioner of the General Land Office, the said John Bartlett shall be entitled to receive a patent for the lot above described.

HENRY O. McHENRY, *Register.*

Proof in case No. 7,687.

Land Office at Ouachita, State of Louisiana:

Personally came and appeared before the register and receiver of said land office, Hugh W. Dunlap, a resident of the parish of Madison, La., who, being duly sworn to depose to the facts within his knowledge, respecting any prior right of pre-emption that may exist to the one now claimed by Walter A. Greisham, under the provisions of the act of Congress, entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights, approved September 4th, 1841," to the lot number 4, of section No. 22, in township No. 16 north, of range No. 14 east. Affiant declare that he has been well acquainted with said section of land, and that no person has been residing on the same since April, 1837; that the said section of land has been in his possession, and that of his brother, since the first day of January, 1837, until about the last of July, or commencement of August, 1842, when the said Greisham entered and made a settlement upon the lot No. 4 of said section, and that affiant made no objections to his (Greisham) doing so. Affiant further declares that he knows of no person or persons whatever who are entitled to the right of pre emption to said land, claimed by said Greisham under and by virtue of the acts of Congress, passed in the year 1838 and 1840, granting preemption rights to settlers upon the public lands.

H. W. DUNLAP.

I, Henry O. McHenry, register of the land office at Ouachita, La., do hereby certify, that the foregoing affidavit was taken and subscribed before me, this 21st day of October, A. D. 1842.

HENRY O. McHENRY, *Register*.

We do hereby certify, that General Hugh W. Dunlap is a gentleman of high standing, and that full faith is due to his testimony. Witness our hands this 21st day of October, A. D. 1842.

HENRY O. McHENRY, *Register*.
H. HOLMES, *Receiver*.

Land Office at Ouachita, State of Louisiana :

Before the register and receiver of said land office, personally came and appeared John Bartlett, a resident of the parish of Madison, State of Louisiana, who, being duly sworn to depose to the truth in behalf of Walter A. Greisham, who claims a right of pre-emption, by virtue of the act of Congress, entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights, approved September 4th, 1841, to the lot numbered 4, of section numbered 22, in township No. 16 north, of range No. 14 east. Affiant declares that he is well acquainted with said Walter A. Greisham, the claimant to said lot; that he is a single man, about 31 years of age; and that he is a citizen of the United States, he being a native thereof. Affiant declares that said Greisham commenced and made a settlement in person on said lot he claims, on the 29th July, 1842, and that he has built a log dwelling-house thereon, which house is fourteen by sixteen feet in size. He has also on said land a corn crib and two cabins, and about seventy-five acres of said lot he claims now in cultivation of cotton and corn. Said Greisham is a housekeeper on, and makes said land his home; he has no other home. Affiant knows of his own knowledge that said Greisham is an actual settler on said land he claims a preemption right to, and that he has not quit or abandoned his own land for the purpose of obtaining a pre-emption right to said land, under the provisions of said act of Congress. Affiant further declares that he has no interest, either directly or indirectly, in the pre-emption right claimed by said Greisham to said land or lot he claims, or to any title he may acquire to the same, or to any part thereof.

JOHN BARTLETT.

I, H. Holmes, receiver of the land office at Ouachita, La., do hereby certify, that the above affidavit was taken and subscribed before me, this 17th day of August, A. D. 1842

H. HOLMES, *Receiver*.

We do hereby certify, that, from the best information we can obtain, and our personal knowledge of him, the above *the above* subscribing affiant, John Bartlett, is a respectable man, and worthy of credit on oath. Witness our hands this 17th day of August, A. D. 1842.

HENRY O. McHENRY, *Register*, and
H. HOLMES, *Receiver*.

I, Walter A. Greisham, claiming the right of pre-emption, under the provisions of the act of Congress, entitled "An act to appropriate the proceeds of the sale of the public lands, and to grant pre-emption rights," approved September 4th, 1841, to the lot number four, of section No. 22, of township No. 16 north, of range No. 14 east, subject to sale at Ouachita, Louisiana, do solemnly swear that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States; nor have settled upon and improved said land to sell the same on speculation, but, in good faith, to appropriate it to my own exclusive use or benefit; and that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which I may acquire from the Government of the United States should inure, in whole or in part, to the benefit of any persons except myself.

W. A. GREISHAM.

I, H. Holmes, receiver of the land offices at Ouachita, Louisiana, do hereby certify, that the above affidavit was taken and subscribed before me, this 17th day of August, A. D. 1842.

H. HOLMES, *Receiver*.

On the back of the paper containing the foregoing affidavit was the following endorsement, viz:

"1841." Walter A. Greisham, lot No. 4, sec. 22, T. 16, R. 14 E., per certificate 7,687. Payment tendered for the within described land on the 17th day of August, A. D. 1842.

H. HOLMES, *Receiver*.

Filed 17 August, 1842.

"*Pre-emption act, 4th September*, 1841."

No. 7,687.

Land Office at Ouachita, La., October 21, 1842.

It is hereby certified, that, in pursuance of law, Walter A. Greisham, of Madison parish, State of Louisiana, on this day purchased of the register of this land office, the lot No. 4, of section No. 22, in township No. 16 north, of range No. 14 east, containing one hundred and fifty-three acres, at the rate of one dollar and twenty-five cents per acre, amounting to one hundred and ninety-one dollars and twenty-five cents, for which the said Walter A. Greisham has made payment in full, as required by law. Now, therefore, be it known, that on presentation of this certificate to the Commissioner of the General Land Office, the said Walter A. Greisham shall be entitled to receive a patent for the lot above described.

HENRY O. McHENRY, *Register*.

(*Proof in case No.* 7,688.)

Land Office at Ouachita, State of Louisiana.

Personally came and appeared before the register and receiver of said land office, Hugh W. Dunlap, a resident of Madison parish, Louisiana, who, being duly sworn to depose to the facts within his knowledge in relation to any prior right of pre-emption that may exist to the one now claimed by Charles B. McKiernan, under the provisions of the act of Congress, entitled "an act to appropriate the proceeds of the public lands, and to grant pre-emption rights," approved September 4th, 1841, to the lot number 3, in section No. 22, in township No. 16 north, of range No. 14 east, affiant declares, that he has been well acquainted with the settlers in said township, and that there has been no person residing on section 22, in said township and range, since April, 1837; that the same has been in his possession and that of his brother since the first day of January, 1837, until on or about the first day of last August, when the said Charles B. McKiernan, entered and settled upon the said lot No. 3, of said section, and to whose settlement thereon affiant gave his consent. Affiant further declares, that he knows of no person or persons whatever who are entitled to the right of pre-emption to said land claimed by said McKiernan, under any of the act of Congress granting pre-emption right to settlers upon the public lands under the acts of 1838 and 1840.

H. W. DUNLAP.

I, Henry O. McHenry, register of the land office at Ouachita, La., do hereby certify, that the foregoing affidavit was taken and subscribed before me, this 21st day of October, A. D. 1842.

HENRY O. McHENRY, *Register*.

We do hereby certify, that General Hugh W. Dunlap is a gentleman of high standing, and that full credit is due to his testimony. Witness our hands this 21st Oct., 1842.

HENRY O. McHENRY, *Register*.
H. HOLMES, *Receiver*.

Land Office at Ouachita, State of Louisiana.

Before the register and receiver of said land office, personally came and appeared John Bartlett, a resident of the parish of Madison, La., who, being duly sworn to depose to the truth in behalf of a pre-emption claim of Charles B. McKiernan, under the act of Congress, entitled "an act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved Sept. 4th, 1841, to the lot No. 3 of section No. 22, in township No. 16 north, of range No. 14 east, in the district of lands subject to sale at Ouachita, La., affiant declares, that he has been acquainted with the said McKiernan, the claimant, for nearly two years past; that he is a single man, now about twenty-seven years old, and that he is a citizen of the United States, he being a native thereof. Affiant declares, that said McKiernan made a settlement on said land he claims a pre-emption right to in person, on the first day of August, 1842; that he erected thereon a log dwelling-house, about 14 by 16 feet in size; that he resides in the same and makes it his home, and has no other home known to this affiant; and further, that said claimant has between sixty and sixty-five acres of said lot he claims a pre-emption right to cultivated in both corn and cotton. Affiant knows, of his own knowledge, that said McKiernan is an actual settler on said land, and that he occupies the same by personal residence thereon, and that he has not quit or abandoned his own land for the purpose of obtaining any benefit arising from said act of Congress.

Affiant further declares, that he has no interest, either directly or indirectly, from any pre-emption right said McKiernan may acquire to said land he claims a pre-emption right to, or to any title he may acquire to the same, either now or at any subsequent time, or to any part thereof.

JOHN BARTLETT.

I, H. Holmes, receiver of the land office at Ouachita, La., do hereby certify, that the above affidavit was taken and subscribed before me, this 17th day of August, A. D. 1842.

H. HOLMES, *Receiver*.

We do hereby certify, that from all the information we can obtain, and our own knowledge of the man, the above affiant, John Bartlett, is an honest and respectable person, and that full weight is due to his acts. Witness our hands this 17th day of August, A. D. 1842.

HENRY O. McHENRY, *Register*.
H. HOLMES, *Receiver*.

I, Charles B. McKiernan, claiming the right of pre-emption, under the provisions of the act of Congress, entitled an " act to appropriate the proceeds of the sale of the public lands, and to grant pre-emption rights," approved September 4th, 1841, to the lot No. 3, of section No. 22, of township No. 16 north, of range No. 14 east, subject to sale at Ouachita, Louisiana, do solemnly swear, that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any State or territory of the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use or benefit; and that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which I may acquire from the Government of the United States should enure, in whole or in part, to the benefit of any person except myself.

C. B. McKIERNAN.

I, H. Holmes, receiver of the land office at Ouachita, La., do hereby certify, that the above affidavit was taken and subscribed before me, this the 17th day of August, A. D. 1842.

H. HOLMES, *Receiver*.

(On the back of the paper containing the foregoing affidavit was the following endorsement, viz:)

"1841. Charles B. McKiernan. Lot No. 3, Sec. 22, T. 16, R. 14 E., per certf'e No. 7,688. Payment tendered for the within described land, on the 17th day of August, A. D. 1842. Henry Holmes, Rec'r. Filed 17 August, 1842."

Pre-emption act, 4th September, 1841.

No. 7,688.

Land Office at Ouachita, La., October 21st, 1842.

It is hereby certified, that, in pursuance of law, Charles B. McKiernan, of Madison parish, State of Louisiana, on this day purchased of the register of this office, the lot number 3, of section No. 22, in township No. 16 north, of range No. 14 east, containing one hundred and sixty and $\frac{70}{100}$ acres, at the rate of one dollar and twenty-five cents per acre, amounting to two hundred dollars and ninety-nine cents, for which the said Charles B. McKiernan has made payment in full as required by law.

Now, therefore, be it known, that on presentation of this certificate to the Commissioner of the General Land Office, the said Charles B. McKiernan shall be entiled to receive a patent for the lot above described.

HENRY O. McHENRY, *Register*.

(Proof in case No. 7,689.)

Land office at Ouachita, State of Louisiana:

Personally came and appeared before the register and receiver of said land office, Hugh W. Dunlap, a resident of the parish of Madison, La., who, being duly sworn to depose to the facts within his knowledge in relation to any prior right of pre-emption that may exist, to the one now claimed by Robert W. Burney, under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the sale of the public lands, and to grant pre-emption rights," approved Sept. 4th, 1841, to the lot No. one, of section No. 22, in township No. 16 north, of range No. 14 east. Affiant declares that he has been well acquainted with the settlers in township No. 16, range 14 east, and that there has been no person residing on section No. twenty-two, in said township, since April, 1837; that the same has been in his possession, and that of his brother, since the first day of January, 1837, until on or about the 2d or 3d day of August last, when the said Robert W. Burney entered, and settled upon, the lot No. one of said section, and to whose settlement affiant gave his consent. Affiant further declares, that he knows of no person or persons whatever, who are entitled to the right of pre-emption to said land claimed by Robert W. Burney, under any *of* acts of Congress granting pre-emption rights to settlers upon public lands, passed in the years 1838 and 1840. H. W. DUNLAP.

I, Henry O. McHenry, register of the land office at Ouachita, La., do hereby certify, that the foregoing affidavit was taken and subscribed before me, this 21st day of October, A. D. 1842.

HENRY O. McHENRY, *Register*.

We do hereby certify, that Hugh W. Dunlap, the above subscribing affiant, is a gentleman of high standing, and that full weight is due to his testimony.

Witness our hands, this 21st day of October, A. D. 1842.

HENRY O. McHENRY, *Register*.
HENRY HOLMES, *Receiver*.

Land office at Ouachita, State of Louisiana:

Before the register and receiver of said land office, personally came and appeared Charles B. McKiernan, a resident of the parish of Madison, La., who, being duly sworn to depose to the truth, in relation to the pre-emption right claimed by Robert W. Burney, under the act of Congress entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved September 4th, 1841, to the lot No. one, of section No. 22, in township No. 16, north, of range No. 14 east. Affiant declares that he is well acquainted with the said Robert W. Burney, the claimant to said lot; that he is a single man, and is now about 24 years of age, and is also a citizen of the United States, he being born in the State of Tennessee. Affiant declares that said claimant entered upon, and made a settlement, in person, on said lot No. one, on the third day of August, 1842, and that he built a log dwelling house thereon, which house is sixteen by fourteen feet; said claimant lives in and occupies said house, and makes the same his home; he has no other home known to this affiant; he has, (said claimant,) about sixty-five acres of said lot under cultivation, in both corn and cotton. Affiant declares that the said Burney is an actual settler of said land he claims, and that he has not quit or abandoned his own land for the purpose of obtaining any pre-emption right to said lot he claims. And further, this affiant declares that he has no interest, either directly or indirectly, in the pre-emption right claimed by said Burney to said land, or to any title he may acquire to the same, or to any part thereof.

C. B. McKIERNAN.

I, H. Holmes, receiver of the land office at Ouachita, La., do hereby certify, that the above affidavit was taken and subscribed before me, this 17th day of August, A. D. 1842. H. HOLMES, *Receiver*.

We do hereby certify, that the within subscribing affiant, Charles B. McKiernan, is a person of most respectable standing and character, and that we believe his testimony entitled to full faith and credit.

Witness our hands, this 18th November, 1842.

HENRY O. McHENRY, *Register*.
H. HOLMES, *Receiver*.

I, Robert W. Burney, claiming the right of pre-emption under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the sale of the public lands, and to grant pre-emption rights," approved September 4th, 1841, to the lot No. one, of section No. 22, in township No. 16 north, of range No. 14, east subject to sale at Ouachita, Louisiana, do solemnly swear, that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land, in any State or Territory of the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use or benefit, and that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which I may acquire from the Government of the United States should enure, in whole or in part, to the benefit of any person except myself.

R. W. BURNEY.

I, H. Holmes, receiver of the land office at Ouachita, La., do hereby certify, that the above affidavit was taken and subscribed before me, this 18th day of November, A. D. 1842.

H. HOLMES, *Receiver*.

(On the back of the paper containing the foregoing affidavits, was the following endorsement:)

1841.—Robert W. Burney. Lot No. 1, sec. 22, T. 16, R. 14 east. No. certificate, 7,699.

"Pre-emption act of 4th September, 1841."

No. 7,699. *Land office at Ouachita, La., November 18th*, 1842.

It is hereby certified, that, in pursuance of law, Robert W. Burney, of Madison parish, State of Louisiana, on this day purchased of the register of this office, the lot No. one, of section 22, in township No. 16 north, of range No. 14 east, containing one hundred and sixty-seven and $\frac{57}{100}$ acres, at the rate of one dollar and twenty-five cents per acre; amounting to two hundred and nine dollars and forty-six cents, for which the said Robert W. Burney has made payment in full, as required by law. Now, therefore, be it known, that on presentation of this certificate to the Commissioner of the General Land office, the said Robert W. Burney shall be entitled to receive a patent for the lot above described.

HENRY O. McHENRY, *Register*.

(See letter of commissioner, of 9th Sept., 1842.)

General Land Office, April 14th, 1843.

I, Thomas H. Blake, Commissioner of the General Land Office, do hereby certify, that the foregoing thirty-two pages and one-half of a page are truly copied from the records and files of this office, except the references in red ink, on pages 6, 10, 14, 16, 20, 21, 26, 27, and 32.

In testimony whereof, I have hereunto set my hand and caused the [SEAL.] seal of said office to be hereunto affixed, the day and date last above written.

THOMAS H. BLAKE, *Comm'r.*

(Document "18.")

Subpœna.

State of Louisiana, parish of Madison, ninth district court:

JAMES PEPPER et al.
vs. } 127.
R. G. DUNLAP.

To the sheriff of the said parish, greeting:

You are hereby commanded to summon John Watt, to be and appear in the district court held at the court-house in the town of Richmond, in the parish aforesaid, on the 3d day of May next, then and there to testify, and the truth to say, in a certain matter of controversy now pending in said court, between James Pepper et. al., plaintiffs, and R. G. Dunlap, defendant, on the part of the plaintiffs, and not thence depart until legally discharged. Herein fail not.

Witness the honorable Thomas Curry, judge of said court, this 1st [SEAL.] day of May, A. D. 1843.

A. R. POTTER,
Dep'y clerk of said court.

Return.

Received on the 2d May, 1843, and served on the 3d day May, A. D. 1843, by handing a summon in person to George Watt, at Milliken's, there being no John Watt, 3d May, 1843.

SAM. G. HOGAN, *C. M. P.*

Service, 62½; mileage, 1.25.

Endorsed.

127.—9th district court; subpœna to the sheriff, filed May 4th, 1843.

A. R. POTTER, *Dpy. clerk.*

Subpœna to Robert Ford.

JAMES PEPPER et al.
vs. } No. 127.
R. G. DUNLAP.

The State of Louisiana, parish of Madison, 9th district court, to the sheriff of said parish, greeting:

You are hereby commanded to summon Robert Ford, to be and appear in the district court, held at the court house, in the town of Richmond, in the parish aforesaid, on Monday 8th inst, then and there to testify, and the truth to say, in a certain matter of controversy, now pending in said court, between James Pepper et al., plaintiffs, and R. G. Dunlap, defendant, on the part of plaintiff, and not thence depart until legally discharged; herein fail not. Witness the honorable Thomas Curry, judge of said court, this 6th day of May, A. D. 1843.

A. R. POTTER, [SEAL.]
Deputy clerk of said court.

Received on the 6th day of May, 1843, and served on the same day personally, at Richmond, La.. Service 62½.

G. W. TARKINGTON, *D. S.*

Endorsed.

127.—Subpœna to the sheriff, filed May 8th, 1843.

A. R. POTTER, *Dy. clk.*

Subpœna to Jeremiah and Benjamin James.

JAMES PEPPER et al.
vs. } No. 127.
R. G. DUNLAP.

The State of Louisiana, parish of Madison, 9th district court, to the sheriff of the said parish, greeting:

You are hereby commanded to summon Jeremiah James and Benjamin James, to be and appear in the district court, held at the court house in the town of Richmond, in the parish aforesaid, 4th day of May next, then and there to testify, and the truth to say, in a certain matter of controversy, now pending in the said court, between James Pepper et al., plaintiffs, and R. G. Dunlap, defendant, on the part of the plaintiffs, and not thence depart until legally discharged; herein fail not. Witness the honorable Thomas Curry, judge of said court, this 2d day of May, A. D. 1843.

A. R. POTTER,
Dy. clk. of said court.

Return.

Received on the 2d day of May, A. D. 1843, and served on the same day of the same month and year, by handing a summons to Ben. James in person, at Richmond, in this parish, and was instructed by plaintiffs' counsel not to summon Jeremiah James, the witness named in this subpœna. Richmond, parish of Madison, La., May 3d, 1843.

J. W. COUCH, *Dep. clerk.*

Endorsed.

127.—Subpœna to the sheriff, filed May 4th, 1843.

A. R. POTTER, *Dpy. clerk.*

Subpœna for George Watt.

State of Louisiana, parish of Madison, dist. court, to the sheriff of the said parish, greeting:

You are hereby commanded to summon George Watt, to be and appear in the district court, held at the court house in the town of Richmond, in the parish aforesaid, on the 4th inst., then and there to testify, and the truth to say, in a certain matter of controversy, now pending in said court, between James Pepper et al., plaintiffs, and R. G. Dunlap, defendant, on the part of the plaintiffs, and not thence depart until legally discharged; herein fail not.. Witness the honorable T. Curry, judge of said court, this 3d day of May, A. D 1843.

JOHN T. MASON, [SEAL.]
Clerk of said court.

Return.

Received May 3d, 1843, and served on the same day, by leaving a subpœna at the domicil of George Watt, in the parish of Madison, La.

T. B. SCOTT, *Sheriff.*
By JAS. L. CRANDELL, *Constable.*

Service, 62½; mileage, 1 87½.

Endorsed.

127.—To the sheriff, filed May 8th, 1843.

A. R. POTTER, *Dep. clk.*

Subpœna for A. J. Loury and others.

JAMES PEPPER et al.
vs.
R. G. DUNLAP.
} No. 127.

The State of Louisiana, parish of Madison, 9th district court, to the sheriff of the said parish, greeting:

You are hereby commanded to summon A. J. Loury, John C. Whitford, Lafayette Jones, John Montgomery, and John Briscoe, to be and appear in the district court, held at the court house in the town of Richmond, in the parish aforesaid, on Thursday the 4th day of May next, then and there to testify, and the truth to say, in a certain matter of controversy, now pending in said court, between James Pepper et al., plaintiffs, and R. G. Dunlap, defendant, on the part of the defendant, and not thence depart until legally discharged; herein fail not. Witness the honorable Thomas Curry, judge of said court, this 2d day of May, A. D. 1843.

[SEAL.] A. R. POTTER,
Dy. clk. of said court.

Return.

Received May 3d, 1843, and served the same day, by leaving a subpœna at the domicil of John C. Whitford, in the parish of Madison, La.

THOS. B. SCOTT, *Sheriff.*
By JAMES L. CRANDELL,
Constable.

Mileage and service, $2 50.

Received on the 2d day of May, A. D. 1843, and served on the same day of the same month and year, by handing summons of this subpœna to all of the within named witnesses, all in person, in the town of Richmond, La.

J. W. COUCH, *Dy. shff.*

Service, $2 50.

Endorsed.

127.—Subpœna to the sheriff, filed May 8th, 1843.

A. R. POTTER, *Dep. clerk.*

Subpœna for J. H. Lawson and Edward Armorer.

State of Louisiana parish of Madison.

To the sheriff of said parish, greeting:

You are hereby commanded to summon John H. Lawson and Edward Armorer, to be and appear in the district court, held at the court house in the town of Richmond, in the parish aforesaid, on the 16th May, inst., then and there to testify, and the truth to say, in a certain matter of controversy, now pending in said court, between James Pepper et al., plaintiffs, and R. G. Dunlap, defendant, on the part of the plaintiff, and not thence depart until legally discharged; herein fail not. Witness the honorable Thomas Curry, judge of said court, this 16th day of May, A. D. 1843.

JOHN T. MASON, [SEAL.]
Clerk of said court.

Return.

Rec. on the 16th day of May, A. D. 1843, and served on the same day of the same month and year, by handing summons to each of the within named witnesses in person, in the town of Richmond, La. Richmond, parish of Madison, May 16th, 1843.

Service, $1 25. J. W. COUCH, *Dep. shff.*

Endorsed.

127, to the sheriff, filed 16th May, 1843.

JOHN T. MASON, *Clk.*

Subpœna for Samuel Hogan.

The State of Louisiana, parish of Madison, 9th district court, to the sheriff of the said parish, greeting:

You are hereby commanded to summon Samuel Hogan, to be and appear in the district court, held at the court house in the town of Richmond, in this parish aforesaid, on the 8th May, inst., then and there to testify, and the truth to say, in a certain matter of controversy, now pending in said court, between James Pepper et al., plaintiffs, vs. R. G. Dunlap, defendant, on the part of the plaintiff, and not thence depart until legally discharged; herein fail not. Witness the honorable Thomas Curry, judge of said court, this 8th day of May, A. D. 1843.

JOHN T. MASON, [SEAL.]
Clerk of said court.

Return.

Received on the 8th of May, 1843, and served personally on Samuel Hogan. Mileage, 1 50; service, 62½.

THOMAS B. SCOTT, *Sheriff.*

Endorsed.

127.—James Pepper vs. R. G. Dunlap, to the high sheriff, filed May 10th, 1843.

A. R. POTTER, *Deputy clerk.*

Subpœna for Wm. H. Harris.

The State of Louisiana, parish of Madison, 9th district court:

H. W. DUNLAP, curator, &c.,
vs. } 127.
JAMES PEPPER et al.

To the sheriff of the said parish, greeting:

You are hereby commanded to summon Wm. H. Harris, to be and appear in the district court, held at the court-house, in the town of Richmond, in the parish aforesaid, on the 15th day of May next, then and there to testify, and the truth to say, in a certain matter of controversy now pending in said court, between H. W. Dunlap, curator, plaintiff, and James Pepper et al., defendants, on the part of def't, and not thence depart until legally discharged. Herein fail not.

Witness the honorable Thomas Curry, judge of said court, this 13th day of May, A. D. 1843.

A. R. POTTER, [SEAL.]
Dy. clerk of said court.

Return.

Rec'd 13th May, 1843, and served on the same day, by handing a a summons to Will. H. Harris in person at Richmond, La.; service 62½.

G. W. TARKINGTON, *Dy. shff.*

Endorsed.

127. Filed May 13th, 1843.

Bill of exceptions.

9th district court, parish of Madison,
State of Louisiana:

HUGH W. DUNLAP, curator,
vs.
JAMES PEPPER, et al.

Be it known and remembered, that on the trial of this cause plaintiff offered to prove, by the documents marked P, that James Pepper had authorized, and that Richard G. Dunlap had paid, to Reynolds, Marshal & Co., $3,100 00, to the admission of which defendant objected, because the credit should have been claimed when the order of seizure was first granted. The court overruled the exception, and admitted the evidence; to which opinion of the court the defendant, by his counsel, excepted, and tendered this his bill of exceptions, which he prayed might be signed by the court, which is accordingly done.

E. K. WILSON, *Judge 7th district.*

Endorsed.

127. Bill of exceptions, filed 19th May, 1843.

JOHN T. MASON, *Clk.*

Bill of exceptions.

Ninth district court, parish of Madison,
State of Louisiana:

DUNLAP, curator, &c.,
vs.
PEPPER et al.

Be it remembered, that on the trial of the above styled suit, plaintiff offered the evidence of George W. Grove, to prove that persons other than McKiernan, Burney, Bartlett, and Greisham, had spoken to him of settling on the section 22, and to acquire pre-emption rights thereon; to the admission of which defendant object, on the ground *of* that evidence of an opinion could not be received; which objection the court overruled and admitted the evidence, to show the good faith of H. W. Dunlap; to which opinion of the court defendant, by his counsel, excepted, and tendered his bill of exception, and prayed that the same be signed, which is accordingly done.

E. K. WILSON, *Judge 7th district.*

Ninth district court, parish of Madison,
State of Louisiana:

DUNLAP, curator, &c.,
vs.
PEPPER et al.

Be it remembered, that on the trial *of the trial* of the above styled suit, defendants offered the evidence of Charles B. McKiernan, a witness introduced by plaintiff, to prove that the pre-emptors, Burney, Greisham, McKiernan, and Bartlett, did not reside in the cabins erected on section 22, T. 16, R. 14 E., but that they merely remained one night, the object of which testimony was to show that they had not acted for themselves, but for Hugh W. Dunlap, and that they had not intended to make a permanent home on those lots of sec. 22, T. 16, R. 14 E., to which evidence plaintiff objected; which objection the court overruled and rejected the evidence; to which opinion the defendant, by his counsel, excepted, and tendered this his bill of exceptions, and prayed that they be signed by the court, which is accordingly.

E. K. WILSON, *Judge 7th district.*

Endorsed.

127. Bill of exceptions, filed May 19th, 1843.

JOHN T. MASON, *Clk.*

Judgment.

PEPPER et al.,
vs.
R. J. DUNLAP.
No. 127.

By reason of the law and the evidence in this case, it is ordered, adjudged, and decreed, that the injunction sued out in this case be made perpetual, for the reason that said order of seizure and sale could not be prosecuted in its present shape against the succession of R. G. Dunlap, or against the intervenors as third possessors; and it is further ordered that the plaintiffs, James Pepper et al., pay all costs of this suit; and it is further ordered there be a judgment, as in case of non-suit, upon all the matters in contest in this suit against all the parties, except as above set forth. Done and signed in open court, this 19th day of May, A. D. 1843.

E. K. WILSON, *Judge 7th district.*

Endorsed.

127. Dunlap, cur., vs. Pepper et al., judgment.

Motion for a new trial.

DUNLAP, curator,
vs.
PEPPER et al.

The plaintiff in this case comes into court and moves for a new trial, upon the ground that there is error in the judgment made in this case, for this, that, after the satisfaction of the notes upon which the order of seizure and sale issued, he says that he is entitled to a large judgment in reconvention against Pepper et al., as prayed for in his petition for injunction; wherefore he says that the judgment is erroneous in that respect.

DUNLAP, *in pro. persona.*

Endorsed.

127. Dunlap, curator, vs. 127, Pepper. Motion for new trial, filed 19th May, 1843. John T. Mason, clk., Dunlap in pro. persona.

Motion for new trial.

DUNLAP, curator,
vs.
PEPPER et al.
No. 125.

The intervenor in this case, Hugh W. Dunlap, comes into court and moves this honorable court for a new trial, upon the ground that the judgment ought to have been in his favor for a large amount in reconvention, instead of the judgment as now that made.

GEO. W. COPELY, *Att'y for intervenor.*

Endorsed.

127. Dunlap, curator, vs. No. 127, Pepper et al. Motion for a new trial, filed 19th May, 1843. John T. Mason, clk. Copely.

Petition of appeal.

Hugh W. Dunlap, curator of R. G. Dunlap, estate, and H. W. Dunlap and wife, intervenors, vs. **James Pepper** et al.	No. 127.

To the honorable the ninth district court of the State of Louisiana, held in and for the parish of Madison, the petition of James Pepper, Sarah H. Evans, Louisa Pepper, and George McCullough, husband of said Louisa, defendants in injunction in the above entitled suit, most respectfully shows:

That in the above entitled case, on the 19th day of May, in the year 1843, a final judgment was rendered and signed against your petitioners, whereby they are irreparably injured and aggrieved; and that petitioners are advised there is manifest error in said final judgment. Wherefore petitioners pray that they be allowed to take an appeal from said final judgment to the supreme court of the State of Louisiana, on petitioners giving bond and security according to law, what is ; that said appeal be made returnable unto said supreme court at the next term thereof, to be holden at the town of Alexandria on the first Monday of October, 1843; and that the said plaintiff in injunction, Hugh W. Dunlap, as curator of the estate of Richard G. Dunlap, and in his own right as intervenor, and Susannah Dunlap, intervenor, be cited to be and appear in said supreme court to answer to this appeal, and begs for general relief; and, as in duty, &c.

STOCKTON & STEELE, *For petitioners.*

Parish of Madison, State of Louisiana:

Let an appeal be granted, as prayed for, on petitioners entering into bond, with good security, in favor of Hugh W. Dunlap as curator of the succession of Richard G. Dunlap, and in favor of said intervenors, Susannah Dunlap and Hugh W. Dunlap, in his own right, in solido, in the sum of two hundred dollars, conditioned according to law, and let said appeal be made returnable unto the said supreme court at the next term thereof, to be holden at Alexandria on the first Monday of October, 1843. And let said plaintiffs in injunction, and said intervenors, be duly cited, according to law, to be and appear in said supreme court to answer to the said appeal.

This done and signed, this 19th day of May, 1843, at the town of Richmond, La.

E. K. WILSON, *Judge 7th district.*

We accept service of the within petition of appeal, waive any further service thereof, and waive service of citation of appeal.

H. W. DUNLAP,
Curator of R. G. Dunlap.
H. W. DUNLAP,
For himself and wife.

Endorsed: No. 127; H. W. Dunlap, curator, &c , vs. James Pepper et al. Petition of appeal filed May 29th, 1843. Stockton & Steele, for petitioner.

J. T. MASON, *Cl'k.*

Appeal bond.

Know all men by these presents, that we, Sarah H. Evans, George McCullough, and Louisa Pepper, his wife, of the State of Missouri, and James Pepper, a resident of the parish of Madison, and State of Louisiana, as principals, and Richard C. Stockton and Alexander T. Steele, residents of the parish of Madison, as securities, are held and firmly bound, in solido, unto Hugh W. Dunlap, curator of the succession of Richard G. Dunlap, deceased, and Hugh W. Dunlap, and his wife, Susannah Dunlap, in the sum of two hundred dollars, to the full, complete, and punctual payment of which, well and truly to be made, we bind ourselves, our heirs, &c., firmly by these presents.

The condition of this obligation is, that the said Sarah H. Evans, George McCullough, and Louisa, his wife, and James Pepper, shall prosecute an appeal, which they have taken, on the 19th day of May, 1843, from a judgment rendered against them on the same day in a suit wherein Hugh W. Dunlap, as curator of the succession, Richard G. Dunlap, dec'd, is plaintiff, and Hugh W. Dunlap, and Susannah, his wife, are intervenors, and the said Sarah H. Evans, George McCullough, and Louisa, his wife, and James Pepper, are defendants, said suit being numbered 127 on the docket of the 9th judicial district court for the parish of Madison, Louisiana; and that they shall well and truly pay and satisfy such judgment as may be rendered against them on the said appeal.

In testimony of which, we have this day signed our names hereto at the parish of Madison. Richmond, La., May 30th, 1843.

SARAH H. EVANS,
GEORGE McCULLOUGH,
LOUISA McCULLOUGH,
By JAMES PEPPER,
Their agent and attorney in fact.
JAMES PEPPER,
ALEXANDER T. STEELE,
RICHARD C. STOCKTON.

Endorsed: 127. Hugh W. Dunlap, curator, vs. No. 127, James Pepper et al. Appeal bond filed May 30th, 1843.

J. T. MASON, *Cl'k.*

Clerk's certificate.

State of Louisiana, parish of Madison:

Ninth district court.

I, John T. Mason, clerk of the ninth judicial district court of the State of Louisiana, in and for the parish of Madison, do hereby certify, that the foregoing one hundred and sixty-six pages, numbered from one to one hundred and sixty-six, inclusive, contain a full, true, and complete transcript of all the proceedings had and of the documents filed in a suit No. 127 on the docket of said court, wherein Hugh W. Dunlap, curator of R. G. Dunlap's estate, and H. W. Dunlap and wife, intervenors, are plaintiffs, and James Pepper et al. are defendants; and also that it contains a full and true statement of all the evidence offered on the trial of said suit.

In testimony whereof, I have hereunto subscribed my name, and have caused the seal of said court to be hereunto affixed, this 9th day September, A. D. 1843.

[L. S.] JOHN T. MASON,
Clerk of district court, parish of Madison.

[For plat, see original.]

LAND OFFICE, OPELOUSAS, LA.,
May 15*th*, 1841.

I do hereby certify the annexed sketch to be a correct copy from the original on file in my office.

G. A. BRYANT, *Register.*

[For plat, see original.]

LAND OFFICE, OPELOUSAS, LA.,
May 15*th*, 1841.

I do hereby certify the above sketch to be a correct copy from the original on file in my office.

G. A. BRYANT, *Register.*

(Endorsed: Pepper and al. vs. Dunlap, 9th D't court, Madison.)

Certificate of report.

B, No. 115; Reg., No. 74. 433 $\frac{59}{100}$ acres.

It is hereby certified that, pursuant to the 8th section of the act of Congress entitled "An act respecting claims to lands in the territories of Orleans and Louisiana, approved 3d March, 1807, the commissioners appointed for the purpose of ascertaining and adjusting titles and claims to lands in the western district of the Territory of Orleans, now State of Louisiana, in their report of claims for the county of Concordia, on the 16th October, 1812, to the honorable Albert Gallatin, Secretary of the Treasury of the United States, recommended for confirmation in favour of James James, a claim of land in the county of Concordia, situated on the river Mississippi, containing four hundred and thirty-three and $\frac{59}{100}$ American acres.

1106.

And it is further certified, that the said claim has been confirmed by an act of approved 29th of April, 1816.

Given under my hand and private seal of office, this 20th day of Ocber, 1841.

[L. S.] G. A. BRIANT, *Register*.

[For plat, see original.]

Pursuant to an order from the surveyor of the lands of the United States south of the State of Tennessee, I have surveyed a tract of land claimed by James James, reported and recommended for confirmation by the commissioners under the No. 115, and confirmed by act of Congress approved the 29th April, 1816, situate in the western district north of Red river, in the State of Louisiana, being section No. 2, in township No. 16, of range No. 15, all east of the basis meridian, and bounded as follows:

Beginning at A, and running thence, N. 7° W., 128 chains, to B; thence, S. 54° E., 108 chains, to C, on the bank of the Mississippi river, the upper corner fronting on the river; thence, along the bank, S. 34° W., 300 chains, to D, the lower corner fronting on the river; thence, N. 58° W., 10 chains; thence, S. 60° W., 22.50 chains; thence, south, 16 chains; thence, S., 40°, 14 chains; thence, west, 13 chains, S. 36 W., 35 chains, to A, the place of beginning, containing acres and hundredths of an acre, and having such shape, form, and marks, natural and artificial, as are represented in the above plat and description.

The 27 day of December, 1827.

Examined and approved. HUGH CURRIE,
Deputy Surveyor.

Surveyor of the Public Lands south of the State of Tennessee.

SURVEYOR GENERAL'S OFFICE,
Donaldsonville, October 1st, 1841.

I hereby certify the above to be a true copy of plat and field notes of survey of the claim of James James, on file in this office.

F. D. NEWCOMB,
Surv'r Gen'l, La.

Office fees, searches, certificates, and plat, $8 00.

T. 16 N., R. 14 E., district north of Red river, La.

[For plat, see original.]

SUR'R GEN'S OFFICE,
Donaldsonville, July 23d, 1842.

Sections 22 and 52 were this day subdivided into lots, in compliance with instructions contained in commiss'rs letter of June 18th, 1842.

Signed, F. D. NEWCOMB,
Surv'r Gen'l, La.

The township lines, traverse of the Mississippi, and the front sections, and sections No. 48 and 52, were surveyed in the fall of the year 1828. The other sections, meridians, and parallels, except the dotted lines, were surveyed in Feb. and M'ch, 1831, by Agnes McPhail. Protracted from and compared with the field notes 6th Ap'l, 1831.

Signed, L. WAILES.

SURVEYOR GEN'L OFFICE, WASHINGTON, MISS.,
April 11th, 1831.

The field notes returned, under this date, by Agnes McPhail, for the boundaries of the square sections of this township, have been examined and approved by

Signed, GIDEON FITZ,
Surveyor of public lands south of Tennessee.

SURVEYOR GENERAL'S OFFICE,
Donaldson, La., April 25th, 1843.

I certify, that the above sketch is a true copy from an approved township map on file in this office.

F. D. NEWCOMB,
Surveyor General, La.

(Endorsed.)

State of Louisiana, parish of Madison:

Ninth district court.

I hereby certify the three maps and certificate annexed to be the original papers called for in the order entered on the minutes of said court, and copied on page 82 of the transcript of this suit.

Witness my signature, this 23d day of September, A. D. 1843.

A. R. POTTER,
Dep. clerk of said court.

H. W. DUNLAP, curator,
vs.
JAMES PEPPER et al.

The plaintiff in injunction in this case comes into court, and prays that the judgment in this case may be annulled, so as to give him the relief as prayed for in his petition for injunction, and that the sale, so far as sections 22 and 52 are concerned, be cancelled, annulled, and avoided, and that the notes sued on be cancelled and avoided, and that petitioner have judgment for the excess after said notes are cancelled, the value of the improvements, and the interest of the A. Looney & Son, as shown by the record, and for general relief.

H. W. DUNLAP.

(Endorsed.)—H. W. Dunlap, curator, vs. James Pepper et al., pray to Judgment filed Oct. 4th, 1843.

COPELY, *for Dunlap.*

Appeal from the ninth judicial district.

Pepper et al.
vs.
Dunlap.

The plaintiffs sold to R. G. Dunlap certain tracts of lands and some slaves, not now necessary to be described particularly, and reserved a mortgage to secure the payment of the price. Some of the notes not having been paid at maturity, the vendors sued out an order of seizure and sale. From that order of seizure an appeal was taken to this court. Pending that proceeding, R. G. Dunlap sold the same property to his brother Hugh W. Dunlap, with a full subrogation to all his rights and actions against his vendors, and those under whom they claim title, to be by him exercised and enjoyed, in the same manner as they might have been by the vendor himself. It is proper further to premise, that the act of mortgage contains the fact *de non alienando*, and consequently H. W. Dunlap is not entitled to the delays and notices of a third possessor. On the death of R. G. Dunlap, which occurred about the same time, H. W. Dunlap was appointed curator of his vacant succession.

After this court had decided upon the first appeal, and the case was remanded for further proceedings, H. W. Dunlap, asserting his title to the property, made opposition without giving security, and a second appeal was prosecuted from a judgment dissolving the injunction thus granted. That judgment was affirmed, with a modification.

H. W. Dunlap, then acting as curator of the estate of his brother, presented his petition for an injunction, in which he sets forth the sale by the plaintiffs to his intestate of two thousand two hundred and eighty acres of land and eighteen slaves, together with different kind of stock, for the price of one hundred and thirty thousand dollars. That the sale was with a full warranty of title. He represents and alleges that the vendors had no title whatever to six hundred and forty acres of said land, to wit: section No. 22, in township 16, range 14 east, in the district north of Red river, fronting on the Mississippi, the same being vacant, and belonging to the United States; and that the vendors well knew that they were without title, but fraudulently represented that they had a good title to the same. He further represents, that the plaintiffs falsely represented themselves as the sole heirs of Cicero Jefferson, alias Joseph Pepper, from whom the derive title to the premises; whereas Joseph M. Looney and W. B. E. Looney were entitled to a part of this inheritance, and that they have brought suit for their share. He further complains, that a payment made by his intestate to Reynolds, Marshall & Co., of \$3,105 $\frac{87}{100}$, has never been credited on his note for \$4,900, and that said note has been overpaid. He further shews, that the mortgage on the slaves was to be released on the payment of the two first notes, which has been done. He further represents, that the plaintiffs are not entitled to the back concession, not having any title to the front tract, No. 22, and that their entry of the back tract is void. He complains that the plaintiffs are prosecuting illegally their order of seizure and sale against the estate, without any order of revival against him or the heirs of the said R. G. Dunlap. Upon those grounds, and others which it is not important to mention, he prays an injunction, and that the contract as to the section No. 22 and the back concession may be declared null and void; that the notes may be decreed to be cancelled and given up; that the plaintiffs be condemned to pay fifty dollars per acre for the land; that the slaves be declared free of mortgage. An injunction was granted, according to the prayer of this petition.

The defendants in the injunction set up, by way of exception, that the plaintiffs could not maintain the action, 1st, because the property does not belong to the estate of R. G. Dunlap, their vendee, but was sold by him to H. W. Dunlap, and has since been sold at Sheriff's sale, and purchased by the wife of said H. W. Dunlap; 2d, because the plaintiff never offered to restore the property, the sale of which he seeks to rescind; 3d, because the whole matter has been heretofore adjudged by the supreme court, in suit No. 127; 4th, because the court has no jurisdiction to rescind a judgment of the supreme court.

In an amended petition, the plaintiff represents, that since the injunction was granted, he has been notified that the Commissioner of the General Land Office has set aside the entries made by the defendants, of sections 52 and 53, and for lot No. 3, of section 54, amounting to 1,149 acres, forming a part of the original purchase. He further shews, that since the obtaining of the injunction, the Government has sold section 22 to several persons.

The exceptions above stated having been overruled, H. W. Dunlap and his wife intervene in this suit, alleging the purchase of the property by the former from his brother, with a cession of and subrogation to all actions and right of warranty, and they unite with curator in praying for a recision of the sale, as it relates to the land, and general relief.

After a trial, the court being of opinion that the order of seizure and sale could not be prosecuted, in its present form, against the succession of R. G. Dunlap, or against the intervenees, as third possessors, the injunction was perpetuated, reserving to the parties all their rights upon the merits.

From this judgment, the original plaintiffs in the order of seizure and sale appealed, and the appellees answer, that there is no error to the prejudice of the appellants; but they pray that the judgment may be reversed in their favor, and that judgment may be rendered, as prayed for in their original and supplemental petition, rescinding the sale of the land.

The case, upon this statement of the facts and the pleadings, presents three questions for our solution: first, whether the court erred in deciding that the plaintiffs could not prosecute the order of seizure, either against the estate or the third possessors; and secondly, whether the intervenors could exercise this action of recision, under their subrogation;

and thirdly, whether the evidence shews such an eviction or failure of title as entitle the intervenors, under the pleadings, to the relief they seek.

I. The original purchaser, R. G. Dunlap, having sold the property before his death, his vendors had a right to follow the mortgaged premises into whose hands soever they might come, and the act of mortgage containing the fact *de non alienando*, the possessor had no right to require any notice; the mortgagee was authorized to proceed at once upon the land, without making the demand, and giving the notices required in the ordinary hypothecary action. This point was settled when this case was last before us, and in many other cases.

II. It appears to us equally clear, that H. W. Dunlap, under the subrogation contained in the act of sale from his brother to him, which is as broad as words can make it, has a right to exercise any recourse or warranty against the vendors of the latter, and any action resulting from a failure of title to the property sold.

The sheriff's sale conveyed to Mrs. Dunlap all the rights and title of her husband, and she takes the property precisely as it was holden by him, and may exercise any action which could have been maintained by the husband. This is not, properly speaking, an action of rescision, because the plaintiffs do not ask the entire contract may be annulled, but only so far as *the* have lost a part of the land by an entire failure of title, and the sale of it by the Government to other persons whose title *are* paramount.

III. The third and last question remains, to wit, whether the evidence shews such an eviction of lots No. 22 and No. 52, or such a total failure of right in relation thereto, as entitles the plaintiffs in injunction to the relief they ask of our hands.

It appears to us incontestable, that James James, under whom the plaintiffs' vendors set up title, never had any to lot No. 22, founded upon any confirmation of claim, either by settlement right or otherwise, under the Spanish or American Government; on the contrary, it appears that his pretensions to the lot in question were rejected by the land commissioners, as unsupported by evidence, according to the act of Congress.

The land remained the property of the United States until the patents issued in favor of four different individuals, as exhibited in the record, covering the entire section. But it is urged, that the patents were obtained by collusion with the plaintiff, by his brother-in-law and overseer, and others, who acted merely as his creatures, and that he thereby defeated the title derived from the defendants. This argument would be entitled to some consideration if Dunlap had, by any agency of his, prevented his vendors from perfecting their title by obtaining a relinquishment on the part of the United States. But it is not shown that they took any steps for that purpose; and, in the mean time, it is clear the land was not private property, and was liable, at any moment, to be sold as a part of the public lands. The vendors were bound by their warranty to make good their title, and if, upon discovering that the claim of James had been rejected, they had procured from the Government a relinquishment of title, it would have inured to the benefit of their vendee, who, in that event, could not have complained, that at the moment of the sale he was without title.

It is contended that the plaintiff in injunction have acquired a good title to the front tract No. 22, by prescription, and that prescription runs against the Government. We are not prepared to sanction the doctrine, that any possession, however protracted, will confer title to the occupant, as against the Government of the United States, to any part of the public domain; nor does it appear to us, that the authorities, on which the counsel relies, support him to that extent. Cases may indeed be supposed, in which the Government, becoming owner of, by purchase, *of* lands within the limits of a State, already private property, for military purposes or otherwise, might suffer an adverse possessor to acquire title by prescription. But we know of no law which establishes the presumption of a grant of any part of the public lands. In the case of Sanchez and wife vs. Gonzales, (11 Martin, 207,) to which our attention has been called, the court said that it might be safely assumed, as a general rule of prescription, that the public domain is not subject to it by any length of time, but that a modified exception to the rule was admitted to exist, by virtue of a law of the recopilacion of the Indies.

The case turned upon the clear principle, that the sovereign power of the State, which holds the public domain for the benefit of the whole community, is not restricted by forms as to the manner in which it may assign and lay out any part of it; and the court held, that a putting in possession, by the surveyor general, by metes and bounds, was a valid title without any written grant.

The evidence shows, that lot No. 22, containing 642 $\frac{94}{100}$ acres, has been declared, by the Commissioner of the General Land Office, to have been erroneously marked on the plats, as covered by the confirmed claim of James; and that the back land, No. 52, containing 655 $\frac{35}{100}$, to have been erroneously entered—both tracts were ordered to be surveyed and treated as public lands.

But the counsel for the appellant contends, that the Commissioner possesses no such authority. That whenever an entry has been made, it can be annulled only by judicial authority; and in support of his doctrine, he refers us to the opinion of the Attorney General of the United States. To this, it may be replied, that the officers of the General Government uniformly regard a patent as the exclusive evidence of title as against the Government, and that, consequently, withholding a patent is equivalent to a refusal to sanction proceedings on the part of registers and receivers, permitting entries under the different pre-emption laws. The 4th rule, in relation to pre-emption cases, approved May 6th, 1836, declares, that when the officers have jurisdiction, and have proceeded regularly, the land office has no power to reverse their decision; but, in such cases, patents will issue of course, unless there is good reason to believe *and* that the decision was obtained by fraud, or founded *on material error of fact or of law*, in which case the patent will be suspended. And the 5th rule declares, that if the supposed error be prejudicial to the United States, the patent shall be suspended until the direction of Congress, or the decision of some competent judicial tribunal, can be obtained, &c., &c.

The entry of No. 52 is shown, by evidence in the record, to have been vacated on the ground that the front tract, No. 22, was not the property of the claimant, but belonged to the domain. Until a patent issued, we are of opinion the title of the Government was not divested, and the whole matter was under the control of the land department; and it is clear, from the acts of that office, that the section in question has been subdivided into lots, as a part of the public lands.

It further appears, that section 53 and lot No. 3, of section 54, have been declared vacant, and the entries set aside, and that a part is covered by the right of pre-emption of Gibeon Gibson.

The lands conveyed and warranted, in addition to section 22 and 52, were fractional sections 23, 24, and 25, section 53, and lot No. 3, of section 54. Eighteen slaves also were sold, and the price of the whole was $130,000, of which $91,000 is acknowledged to have been paid in hand. The whole was sold *in globo*, and we are not enabled to say how much was given for the land, and how much for the slaves. But it appears to us clear that there is a total failure of title as to a great part of the land conveyed, as set forth in the previous part of this opinion, and that the plaintiffs in injunction *and* to that extent entitled to relief. But the evidence does not enable us to decide finally upon the rights of the parties, and especially upon the amount which the defendants are bound in equity to refund. We have, however, no doubt that, as to a great part of the land, it is shown to be public, and that the vendors were without title. In such case, a regular eviction by judicial authority is not required to entitle the purchaser to relief. The sale of another's property is null and void.

It is therefore adjudged and decreed, that the judgment of the district court be avoided and reversed; and it is further ordered and adjudged, that the case be remanded for further proceedings, according to law, and in conformity to the opinion herein expressed, and that the appellants pay the costs of the appeal.

DUNLAP et al.
vs. } No. 980.
PEPPER et al.

To the honorable the judges of the supreme court of the State of Louisiana:

The petition of appellants in the above entitled cause most respectfully prays, that a rehearing be granted them, on the following grounds, to wit:

1st. That Richard G. Dunlap, the vendee of appellants, knew, at the time the sale and conveyance were made from appellants to him, the nature of the claim and title of appellants to the land, numbered section 22; that said title was doubtful, and that it was apprehended the title to the same might be held to rest in the United States; in fine, that

Civil Code, 2,535. he was well aware of the danger of eviction, and consequently he took upon himself that risk.

2d. That plaintiff in injunction demands in his petition a recision in part only of a contract, not the restitution of the price of a portion of
Record, 53. property for which he has been evicted. This demand of his is clearly contrary to law. He must demand the recision of the contract; for it cannot be divided, and the court cannot give him what he does not ask.

3d. The plaintiff in injunction, by his own acts, has defeated the title under which he received the property; and, therefore, he is without remedy.

4th. The title of the plaintiff to the said section, numbered 22, is good and valid against all the world, because, from the long lapse of time, during which said section numbered 22 has been held as private property by the said plaintiff and his authors, a grant *for said lands must be presumed*.

The facts relied on, in the first ground assigned for a rehearing, are
Record, 120. most fully and clearly *establish* by a bond (to be found at page 120 of the record) from C. Jefferson (Joseph Pepper) to Aaron Lilly, and by a receipt of Lilly, dated 2d March, 1837; to which receipt *Richard G. Dunlap*, the vendee of appellants, is *a witness*. This receipt of Lilly is written on the back of said bond, and is in the words and figures following, to wit: "Received of the heirs of Ciceron Jefferson a note drawn by Richard G. Dunlap, and endorsed by David M. Porter and William F. Smith, which I take for seventeen hundred and sixty dollars as a full consideration of the within bond.

"AARON LILLY.

"March 2d, 1837.

"Attest: R. G. DUNLAP."

The bond on which this receipt is *endorsed* recites, that, on the day of the date of said bond, the obligor, C. Jefferson, had bought of Aaron Lilly "a tract of land, called the James James donation, being section No. 22, in township No. 16, range No. 14 east, situate on the west bank of the Mississippi river, the above sum of fifteen hundred dollars being a part of the purchase money." And then *its* proceeds to state, if the title to James James for said land shall prove to be good against all persons, and against the United States, or if the Congress of the United States shall pass an act confirming the title of James James, deceased, then the amount of the bond (fifteen hundred dollars) shall be due and demandable, &c.

Let it be particularly remarked, that, on the 20th December, 1836, the original contract between the appellants (the Pepper) and Richard
Rd., 93. G. Dunlap was entered into, (see record, page 93;) that in that contract, which contemplates a sale and conveyance, thereafter to be made, it was stipulated, a full and complete chain of title to the property was to be produced before the conveyance and be-

fore said Dunlap should be bound to pay the sum of fifteen thousand dollars, therein stipulated to be paid by him on the production of such complete chain of title. And be it remarked, also, that Richard G. Dunlap was at that time in actual occupancy and possession of said property, and, of course, was anxious to learn all about the title to it; that, by his note delivered to Lilly, as mentioned in the receipt written on the back of said bond, he assumed the debt of the heirs of C. Jefferson (Joseph Pepper) to Aaron Lilly, the obligee therein. And it cannot be doubted that he, Richard G. Dunlap, the vendee of appellants, was as early as that day, 2d March, 1837, fully informed of the nature of the title of appellants to the said section, numbered 22, and was aware of the danger of eviction.

Rd., 10.

Now, with this full knowledge of the supposed defect in his, vendor's title, on the 28th day of April, 1837, (see record, page 10,) after ample time and means had been afforded him to become informed, and to judge of the sufficiency of said title, Richard G. Dunlap accepted from the appellants a conveyance then entirely satisfactory to himself, or must be presumed; for, if he was not satisfied of the validity of the title, he was in no way bound to accept this conveyance.

C. C., 2481.

C. C., 2555.

3 R. R., 137.

If positive law did not so provide, even common sense would dictate, that one man might, after full expositions of the defects in his title to a thing, sell it, such as it is, to another, who was willing to purchase, and run the risk of eviction. But the 2481 article of the Louisiana civil code expressly provides, that the purchaser may lawfully take upon himself the risk of eviction; and that he shall be held to have done so, if at the time of sale he was apprised of the defects of the title, and the consequent danger of eviction. (See also civil code, 2555.) And in accordance with this positive provision of our law, this honorable court, in a very recent case, (Estill vs. Holmes, reported in 3 Robinson's Report, 137,) has fully sustained our position. In that case, Estill had sold to Holmes, with warranty, *land belonging to the United States*, which was afterwards, without any connivance or negligence on the part of Holmes, sold by the United States to one Norris; but the court says it is clear all the circumstances were well known to the defendants at the time he gave his notes; and that he cannot now insist the payment of the price on that score, (referring to article 2481 of civil code.) The decision in the case just referred to is a decisive and judicious construction of that article of the civil code which says, the sale of a thing belonging to another is null; which signifies nothing more than that the real owner of the thing should not be prejudiced by such sale. The code does not intend to say, that the sale of a thing belonging to another is null, as between the parties to that sale, but only as to the real owner. So far from having so provided, on the contrary, it does most expressly provide, by article 2481, that the buyer may take upon himself the risk, that the real owner will his right, &c. It has been often decided by this court, that if a man sells what

9 L. R., 100; 12 L. R., 172; 16 L. R.; 97; 3 Robinson, 235.

does not belong to him, and he afterwards *acquirs* a title to the thing, this, his subsequent acquisition, enures to the benefit of his vendee. This could by no means be the case if the sale was null, as between the vendor and vendee. (See 9 L. R., 100; 12 L. R., 172; 16 L. R., 97; and 3 Robinson, 235.) Then, if this is law, Dunlap ought, at the least, to have *presumed* the property, and rendered it back in such state as that in which he received it. And if, by his negligence, he he has allowed others to acquire rights on it, he cannot be relieved.

C. Code, 2490.

Our observations on the second ground, assigned for a rehearing, we will make very brief. The 2490th article of the Louisiana code says, "if, in case of eviction of a part of the thing, the sale is not cancelled, the value of the evicted part is to be reimbursed to the buyer, according to its estimate, proportionally to the total price of the sale."

C. Code, 2487.

By reference to article 2487 of civil code, it will be at once perceived, that the article 2490, above cited, has regard only to those *case* in which the value of that part of the thing from which the purchaser has been evicted is not "of such consequence, relatively to the whole, that the buyer could not have purchased it without the part of which he is evicted." In other words, the article 2490 refers to those cases in which the part evicted is so small that the purchaser is not entitled to a recision, but only to a diminution or restitution of the price proportionally, &c.

It was certainly never contemplated that, in consequence of an eviction from a part of the thing sold, the purchaser should be at liberty to carve the contract into as many pieces as he might choose, and take such as he deems advisable.

In this case, the court has granted to the plaintiff in injunction what he has not asked, the institution of the piece of that part of the land to which the court deems the appellants had no title.

Record, 91 & 92.

As to the third ground assigned by us, we have little to remark. The law on this point is too well settled to admit any controversy; and the fact that the plaintiff in injunction did, by his attorney, George W. Copely, procure the officers of the United States to make claim of the land in sections 22 and 52, is clearly evidenced by the testimony of said Copely, (see record 91 and 92,) and by his, said Copely, correspondence with the Commissioner of the General Land Office. (See record 142, 143, and 144.)

Record, 146.

Record, 87 & 88.

It also appears that the said plaintiff did actually give up to the pretended pre-emptors their pretended possession of the land, section 22; that after the entry of said land at the land office by said pretended pre-emptors, he pretended to take back the said land into his own possession, as a lessee of said pretended pre-emptors, he was all the while in actual possession of the land; he aided the said persons, or rather he, by his own slaves, built the cabins in which said pre-emptors pretended to reside on the land; all of which was contrary to his duty as vendee, who is, in law, a trustee for his vendor, and so is bound to hold the land. (See the deposition of George Watt, at pages 138 and 139, of record; deposition of H. W. Dunlap, at page of record 146. See testimony of Armaurer and James Hogan, record 87 and 88.)

Record, 138 & 139; ib. 146.

It is to be remarked, that the law refuses any relief to a vendee who is even *negligent*, so as to allow other persons to acquire adverse rights on the property sold, a portion, it will not relieve one who is *active in aiding others to obtain such rights.* See Civil Code, 2478, and 12 L. R. 32.

C. C. 2478, 12 L. R. 32.

The fourth and last ground assigned, we approach with great diffidence, as it is simply a matter of law, and is one on which the court, as appears by the opinion delivered, has bestowed a good deal of attention; but this is one of those questions so momentous in the consequences which may result from its decision, that we are encouraged to hope this honorable court will not only excuse us for thus again, in this case, obtruding it upon their attention; but will also believe with us, that, by reason of its grave importance, it deserves the most serious, dispassionate, and elaborate investigation and discussion.

With great *difference* we submit, in the first place, the proposition, *that the United States are but the ordinary proprietors of what are called the public lands*, under which description are included all wild and vacant lands acquired by assignment and transfer from the several States of this Union to the United States; and also such lands lying within the limits of what, at the time of its purchase by the United States from the French Government, was denominated Louisiana, or the province of Louisiana, now comprising the State of Louisiana, Arkansas, and Missouri, and the territory of Oregon; and likewise all such lands lying in Florida acquired by purchase from Spain.

It is very clear, that these lands, both those which are the gift or donation of the State to which they originally belonged, and those which have been acquired by purchase from foreign governments, are simply *property* in the hands of the United States, and that their acquisition brought no additional *sovereignty* to the United States—a government receiving and enjoying all its powers, limited as they are, from the Constitution, not voluntary compact entered into and subscribed by the several States composing the Union.

The United States could acquire additional sovereignty only by the remodelling the Constitution, in which all the States should concur, or should be held legally to concur; and the several States are as fully sovereign now, as they were before the cession of the vacant lands within their borders. It will be conceded, that the several States have complete and full control over the property, of every description, locally situate within their respective borders; or, in the language of this court, used in delivering the opinion in the case of Shroder's Syndics vs. Nicholson, (see 2, L. R. 354,) the State "certainly has the right to regulate property within her limits, and to say how, when, and on what conditions, it shall cease to belong to one person, and be transferred to another." This power of the States over property is limited and controlled only in certain specified cases, where authority over property is yield to the United States by express grants contained in the Constitution. These instances are, the power of taxation, and to levy duties, (which are much the same,) the power to regulate commerce, and to pass uniform laws on the subject of bankruptcy; neither of these latter powers enures to the benefit of the Government of the United States, which is simply appointed the guardian to watch over these great interests, in which the citizens of several States, and foreigners with whom we have friendly relations, are so vitally concerned.

The power to raise revenue is the only power over property which the Government of the United States holds for its own benefits, *in its sovereign capacity;* any specific object of property to which it may be entitled, is held, not in a sovereign capacity, but only in capacity of a corporation, entitled to hold property as an individual. This is most fully supported by the opinion of Judge Catron, in the matter of "the City of Mobile vs. Eslava," reported in 16 Peters, Sup. Court Reports, page 254, where it is said, "The clause inserted in the Constitution of Alabama, reserving the rights of property to the United States, as a compact with them, embraces lands under water, as emphatically as those not covered with water; but if no stipulation, saving the interest of the United States, had been made, they would have had just as much right to their private property as an individual had to his. *They hold, as a corporation, an individual title.*"

16 Peters, R. 254.

We think it will be readily conceded, that, in cases of s lands situate in Louisiana, it will go to the State, and not to the United States, *be* if they held their lands in a sovereign capacity.

Whenever lands held by a sovereign, in a sovereign capacity, are disposed of to an individual, and by reason of defect of heirs they become escheated, they invariably return again to the original sovereign grantor.

The very learned Vattel says, "one sovereign may own lands within the sovereignty of another prince; and in such case, the land so held is subject to the lex rei citæ, &c.; see Vattel's L. of Nations, book 2, ch. 7, §83. It follows, of course, said lands may be claimed by prescription, as lands of individuals are; see Vattel's L. of Nations, book 1, ch. 23, § 295. He says, prescription taken place, even between sovereigns; see book 2, ch. 11, § 146; and that a nation may even lose its sovereignty by prescription; see book 1, ch. 17, § 199.

Vattel, L. of nations, 2 book ch. 7, § 83.
Ib. 1 book, ch. 23, § 295.
Ib. book 2, ch. 11, § 146.
Ib. book 1, ch. 17, § 199.

Now we hold that, at most, the tenure by which the United hold lands in Louisiana, cannot be more favorable for them than such tenure, by one prince or sovereign, of lands situate in the dominions of another.

Such the United States, it is very clear, has ever understood to be the nature of her own tenure of their lands; for, in all the acts of Congress admitting new States into the Union, it is expressly provided, she shall retain her *property* in the public lands in the State, and that they shall be *exempt from taxation*. This provision could not be necessary if she held the lands in her sovereign capacity.

But the United States Supreme Court, in the case of Mitchel et al. vs. U. States, (see 9 Peters Sup. Court R. 760 and 761,) has expressly recognised the doctrine that prescription is a good title to lands against the United States, and even against a sovereign, whose *position* is much better *defined* than that of the United States.

9 Peters R., 760 & 761.

This must necessarily be the case in every government; otherwise, after a lapse of time, all the land of the country would, from time to time, be seized, and treated as public property, unless the poor proprietor could establish, before a court of justice, *that a grant* of the lands originally existed. This would be very unwise, and open the door for great oppression. In the hands of a single despot, it would be an all-powerful instrument with which to crush the strong; and in the hands of a republican multitude, a means to effect, in some measure, the object of an aggression law.

The court in this case admits, that the *city* of arsenals, forts, &c., purchased by the United States from individuals, in pursuance of certain provisions of the Constitution, may perhaps become the subject of prescription; then why not a like use as to lands acquired by purchasers from a sovereign? The quality of the person from whom the United States acquired the land, ought to have no influence in determining the nature of their tenure thereof.

Record 110. In this case it appears, by evidence on the record, at pages 110, 114, that the section 22 was surveyed as early as 1807 for James James, which survey was then filed in the proper office; and that since about the year 1805 or 1806, the said land has been occupied and claimed by said James James, and his heirs, and their vendees.—See deposition of James, at pages of record 136 and 137.

Ib. 136 & 137.

It also appears, that on the township survey made by the United States in 1829, this claim of James James was surveyed, and marked as belonging to him; see record 114; and in 1836, the United States sold to appellants the section 52, as the back concession to their front, which was section 22, and thereby recognising the title of the appellants to section 22. Thus it will appear, the land has been held as private property for nearly forty years, and has been ever treated, till very recently, by the United States, as private property.

Ib. 114.

For all which reasons, appellants most respectfully pray that a rehearing be granted them in this case, pray for general relief; and as in duty, &c.

Since the above was written, appellants have been advised by counsel, and they verily believe that, on investigation, it will be found that the entries or sales allowed by the register and receiver of the land office at Monroe, to the *pretented* pre-emptors of the said section 22, are in palpable violation of positive statutes of the United States. By the act of Congress, passed 2d March, 1805, it appears that the commissioners, appointed to investigate land claims in Louisiana, were required to make report, on the claims submitted to them, to the Secretary of the Treasury, who was required to submit said reports to the Congress of the United States. See laws, &c., relating to the public lands, page 521, No. 113, section 5.

Laws, &c., pub'c lands, page 521.

These powers and duties of said commissioners are continued, &c., by the act of Congress, passed 21st April, 1806; and by the fifth section thereof, which continues in force the act passed as above said, it is expressly provided that all the lands which may be embraced by the report of said commissioner *shall not be otherwise disposed of*, until a decision of Congress shall have been had thereupon. See ib., page 534, and against this prohibition of selling lands claimed before said commissioners, until the same shall have been acted on by Congress, is reported by the 10th section of the act of Congress, passed 3d March, 1811.

Ib., 534; ib., 591.

Now appellants allege, that it is a point insisted on and proved, by *plaintiff in injunction*, that the claim of James James for said section 22 was duly presented to the commissioners, sitting at Opelousas, for their official action thereon; and that said commissioners made an unfavorable report of said claim. Appellants further allege that said claim has never been acted on by Congress; and, until the final determination of said body upon said claim, the said section of land 22 is not subject to sale by the United States; and the sales so made, as aforesaid, of said section 22, to the said *pretented* pre-emptors, by the United States, are absolutely null and void; and consequently it is clear appellants have, by all means, at best a *claim* on said section 22, which there is every reason to hope and believe will be ultimately confirmed by the Congress of the United States. But appellants expressly reassert and allege that their title to said land is full and complete, as before stated.

Wherefore, appellants pray for a re-hearing; for general relief, &c., &c.

STOCKTON & STEELE, and
WILLIAM DUNBAR,
For Appellants.

Endorsed.

Rehearing refused.

H. W. DUNLAP, curator, et al.
vs. } No. 980.
JAMES PEPPER et al.

Supreme court, October term, 1843.

It is agreed, between the parties to the above stiled suit, that the court may take the record in the above cause to New Orleans, and render their opinion in said cause on or before the first day of February, 1844. It is also agreed the court shall retain the record and opinion in said cause until the 1st of March 1844; and that either party shall have the right to *file* file a petition for a rehearing in said cause by the first of March, 1844; and that in the event that a petition for rehearing shall be filed by either party, that the court shall retain the record until after their decision on the petition for rehearing. It is also agreed that the court shall determine on the petition for re-hearing, if one should be filed in New Orleans, and before they return the record to the clerk at Alexandria.

H. W. DUNLAP.
R. C. STOCKTON,
Attorney for Pepper et al.

Endorsed.

H. W. Dunlap, curator, &c., vs. James Pepper et al. Agreement of parties. Filed October 28th, 1843.

A. S. BRUGHURT, *D'y Clerk.*

Assignment of errors.

JAMES PEPPER et al., plaintiffs in error,
vs.
HUGH W. DUNLAP et al., defendants in error.

Writ of error to the supreme court of La. for western district at Alexandria.

The plaintiffs in error assign for errors, for which the judgment of the supreme court of Louisiana should be reversed, the following:

1st. The supreme court of Louisiana erred in deciding that the patents issued by the United States, to McKierman, Bartlett, Burney, and Greisham, were valid against the plaintiffs in error for the section of land numbered 22, in township No. sixteen, of range fourteen, east; for plaintiffs in error allege that, under the provisions of the several acts of Congress passed in relation to the settlement of land claimed in Louisiana, the said section of land was not subject to sale by the United States until after some final action on the claim of James James thereto had been had by Congress; and they aver that no such final action by Congress, in reference to said claim, was ever had; and consequently the patents for said land are void and of no effect against the plaintiffs in error; and so the said supreme court of Louisiana should have decided, and in deciding otherwise they erred.

2d. The supreme court of Louisiana erred in deciding that the title of the plaintiffs in error, to said section of land numbered 22, was not good and valid against the United States, and those claiming under the United States; for plaintiffs allege that the act of the surveyor general of the United States, in surveying and marking on the township plat, in which said land is situated, the said section 22, as the property of the said James James, is equivalent to a patent from the United States to him; and also they allege that the recognition of the title of James James to said land, made by the properly constituted officers of the United States, in the act of allowing the claimants under James James, of the said section 22, to enter the lot, or section 52, in said township, by right of pre-emption, as the back concession of section 22, is also equivalent to a patent to him from the United States for said section of land numbered 22.

3d. The court erred in deciding that the laws of the State of Louisiana, which regulate and control the rights of property locally situate within her borders, are not to be observed as rules of decision in controversy between the United States, or persons claiming under the United States and individuals, when the subject of which said controversy is the ownership of said property so locally situate within the limits of the State; for plaintiff in error allege, that, under the Constitution and laws of the United States, the title which the United States have in and to what are commonly called the public lands in Louisiana is not a political or sovereign right, but is simply a right of property; and as such their claims to said lands are subject to, and they must be governed by, the laws of Louisiana relating to such property; and so the said plaintiffs in error aver, that the said court erred in deciding the laws of Louisiana, relative to prescrip*tion* title to lands in said State, did not apply to the lands therein claimed by the United States as their property, and in overruling the plea of prescription set up by plaintiffs in error to defend their title to said section numbered 22.

4th. The court erred in deciding that the lots or sections of land in said township, numbered 52, 53, and 54, were not rightfully the property of the plaintiffs in error at the time they sold the same to Richard G. Dunlap, but were the property of the United States; for said plaintiffs in error aver that their title to said lots, 52, 53, and 54, was good and valid under the laws and Constitution of the United States, and that it still remains unquestioned, so far as the United States are concerned; they, the United States, having, in the year 1836, by their duly constituted agent, or officers, sold said lots of land to the plaintiffs in error, and to their deceased relatives, jointly, in pursuance of the acts of Congress providing for the disposition and sale of the lands belonging to the United States; which said sales *has* never been in any manner vacated or set aside by any competent authority whatever.

5th. The judgment of the court is otherwise erroneous and illegal, and in violation of the rights of the plaintiffs in error, which are protected and guaranteed by the laws and Constitution of the United States.

For all which reasons and manifest errors, the plaintiffs in error aver the said judgment of the supreme court of Louisiana ought to be reversed. Wherefore they pray said judgment be reversed and set aside; and the honorable the Supreme Court of the United States, proceeding to give such judgment as should have been rendered in the supreme court of Louisiana, do adjudge the plaintiffs' title was good in and to the said sections of land, numbered 22, 52, 53, and 54, at the time of the sale made by them to Richard G. Dunlap, and is so still; and order that the same be sold to pay and satisfy the debt due from the defendants in error, as set out in their original petition.

R. C. STOCKTON,
Counsel and attorney for plaintiffs in error.

Filed November the 21st, 1844.

W. F. MURRAY, *Dep'y Clerk.*

Know all men by these presents, that we, James Pepper, Sarah H. Evans, Louisa McCullough, and George McCullough, as principals, all of the State of Missouri, and Richard C. Stockton, as security, of the parish of Madison, and State of Louisiana, are held and firmly bound, jointly and severally, unto Hugh W. Dunlap, curator of the succession of Richard G. Dunlap, deceased, and also to said Hugh W. Dunlap, and his wife, Dunlap, in their individual capacity, in solido, both of said parish of Madison, in the sum of one thousand dollars, lawful money of the United States of America, to be paid to the said Hugh W. Dunlap as curator as aforesaid, and to said Hugh W. Dunlap, and his said wife, Dunlap, in their own right, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the twenty-first day of November, in the year of our Lord eighteen *eighteen* hundred and forty-four.

Whereas the above bound James Pepper, Sarah H. Evans, George McCullough, and Louisa McCullough, have this day presented a petition to the honorable the supreme court of Louisiana, for the western district, holding sessions in and for the said western district of Louisiana, at Alexandria, praying a writ of error to take to the Supreme Court of the United States the suit of Hugh W. Dunlap, curator, et al. vs. James Pepper et al., numbered on the docket of said supreme court of Louisiana 980, for correction of errors, &c.; which said writ of error granted, according to law, by J. McKinley, associate judge of the Supreme Court of United States, and was made returnable into said Supreme Court of the United States on the first Monday of December, in the year 1844.

Now, the condition of the above obligation is, that we, the above bounden James Pepper, Sarah H. Evans, George McCullough, and Louisa McCullough, and Richard C. Stockton, will well and truly pay to the said Hugh Dunlap, and his said wife, Dunlap, the defendants in said writ of error, all such damages as they may recover against us, in case it should be decided that the said writ of error was wrongfully obtained.

JAMES PEPPER, [L. S.]
SARAH H. EVANS,
By R. C. STOCKTON, *Attorney*, [L. S.]
GEORGE McCULLOUGH,
By R. C. STOCKTON, *Attorney*, [L. S.]
LOUISA McCULLOUGH,
By R. C. STOCKTON, *Att'y*, [L. S.]
RICHARD STOCKTON. [L. S.]

Bond endorsed.

Sup. court of Louisiana, for western district, at Alexandria, No. 980. James Pepper et al., vs. H. W. Dunlap et al. Bond for writ of error. Filed the 21st of November, 1844.

W. F. MUNCEY, *Dep'y clerk.*

State of Louisiana, parish of Carrol:

Richard C. Stockton, attorney for James Pepper, Sarah H. Evans, George McCullough, and Louisa McCullough, makes oath that, on the 7th day of November, 1844, when the writ of error was granted and allowed, by the honorable John McKinley, in the case of Hugh W. Dunlap, curator, &c., vs. James Pepper et al., No. 980, of *of* the docket of the supreme court of the State of Louisiana, sitting at Alexandria, for western district of said State, he, said Stockton, offered to give good and sufficient bond on behalf of the plaintiffs in error, and in favor of the defendants in error, according to law, but the said honorable John McKinley declined taking any bond at all on granting said writ, and assigned as a reason for thus declining to take any bond, that the clerk of the supreme court of the State of Louisiana could rightfully take such bond, and he therefore deferred the duty to him, said clerk. And the said Stockton further acknowledges and makes oath that he signed the within bond as attorney for the principals therein, and as security for them; he also swears he is worth at least the sum of two thousand dollars; he also acknowledged that the clerk of the supreme court at Alexandria, La., is authorized to fill up this bond with any sums he may think fit.

RICHARD C. STOCKTON.

Subscribed and sworn to before me, this 9th day of November, 1844.

THOM. CURRY,
District judge, 9th judicial district of Louisiana.

United States of America, ss:

The President of the United States, to the honorable the judges of the supreme court of the State of Louisiana, holding sessions for the western district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said supreme court, before you, or some of you, between Hugh W. Dunlap, curator, &c., and his wife, Dunlap, and James Pepper, Sarah H. Evans, George McCullough, and Louisa McCullough, a manifest error hath happened, to the great damage of the said James Pepper, Sarah H. Evans, George McCullough, Louisa McCullough, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at

Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this sixteenth of November, [SEAL.] in the year of our Lord one thousand eight hundred and forty-four.

For DUNCAN N. HENNEN,
Clerk of the United States circuit court and eastern district of Louisiana,
J. Q. A. HOIT, *Deputy clerk.*

Allowed by me, this 7th day of November, 1844.

J. McKINLEY,
Associate justice of the Supreme Court of United States.

Writ of error endorsed.

Supreme court of Louisiana:

J. PEPPER et al.
vs.
H. W. DUNLAP et al.
No. 980. Writ of error.

Copy of the writ of error lodged in the clerk's office of the supreme court of the State of Louisiana, for the western district of Louisiana, at Alexandria, in pursuance the statute in such cases made and provided, this the 21st day of November, 1844.

RICH'D C. STOCKTON,
Attorney of plaintiffs in error.

(Copy of writ of error.) Filed November the 21st, 1844.

W. F. MUNCEY, *Dy. clerk.*

I hereby certify, that the foregoing is a true and correct copy, as taken from the original transcript on file in my office.

Given under my hand and seal of court, as clerk of the supreme [L. S.] court for the western district of the State of Louisiana, at Alexandria, this 20th day of March, A. D. 1845.

ALPH. LASTRAPES, *Clerk.*

United States of America, ss:

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana, holding sessions for the western district of Louisiana, at Alexandria, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said supreme court, before you, or some of you, between Hugh W. Dunlap, curator, &c., and his wife Dunlap, and James Pepper, Sarah H. Evans, George McCullough, and Louisa McCullough, a manifest error hath happened, to the great damage of the said James Pepper, Sarah H. Evans, George McCullough, and Louisa McCullough, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this sixteenth of November, in the year of our Lord one thousand eight hundred and forty-four.

For DUNCAN N. HENNEN,
[L. S.] *Clerk of the U. S. circuit court and east. dist. of La.*
J. Q. A. HOIT, *Dept. clk.*

Allowed by me, this 7 day of November, 1844.

J. McKINLEY,
Associate justice of the Supreme Court of the U. S.

Supreme court of Louisiana:

JAMES PEPPER et al.
vs.
H. W. DUNLAP et al.
} No. 980. Writ of error.

Copy of the writ of error lodged in the clerk's office of the supreme court of Louisiana, for the western district of Louisiana, at Alexandria, in pursuance the statute in such cases made and provided, this the 21st day of November, 1844.

RICH'D C. STOCKTON,
Attorney of plaintiffs in error.

(Original writ of error.)

The United States of America, to Hugh W. Dunlap, curator of the succession of Richard G. Dunlap; to Hugh W. Dunlap, (in his own right,) to his wife, Dunlap, residing in the parish of Madison, and State of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the 1st Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, for the western district of Louisiana, at Alexandria, wherein James Pepper, Sarah H. Evans, George McCullough, and Louisa McCullough, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this sixteenth day of November, in the year of our Lord one thousand eight hundred and forty-four. [L. S.]

Allowed by me, the 7 day of November, 1844.

J. McKINLEY,
Associate justice of the Supreme Court of the U. S.

Supreme court of Louisiana:

J. PEPPER et al., plaintiffs in error,
vs.
H. W. DUNLAP et al., defendants in error.
No. 980. Citation in error.

(Original citation.)

Marshal's return.

Received November 16th, 1844, and on the 26th November, 1844, served copy on Hugh W. Dunlap in person, in the parish of Madison, 450 miles from New Orleans.

J. B. ROBINSON, *Dep. marshal.*
For A. S. ROBINSON, *U. S. marshal.*

Filed, 11th December, 1845.

[REC. CXLV, D. T. 1845.]—23